

## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 7 April 2016

Time: 7.00 pm

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

Membership:

Councillors Mike Baldock, Cameron Beart, Bobbin, Andy Booth, Roger Clark, Richard Darby, Mike Dendor, Mark Ellen, Sue Gent, James Hall, Mike Henderson, James Hunt, Lesley Ingham, Peter Marchington, Bryan Mulhern (Chairman), Prescott (Vice-Chairman) and Ben Stokes

Quorum = 6

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- |  | Pages |
|--|-------|
| 1. Fire Evacuation Procedure   |       |
| <p>The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.</p> <p>The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.</p> <p>The Chairman will inform the meeting that:</p> <p>(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park; and</p> <p>(b) the lifts must not be used in the event of an evacuation.</p> <p>Any officers present at the meeting will aid with the evacuation.</p> <p>It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.</p> |       |
| 2. Apologies for Absence and Confirmation of Substitutes   |       |

3. Minutes

To approve the Minutes of the Meetings held on 10 March 2016 (Minute Nos. 584 - 592) and the Extraordinary Meetings on 30 March 2016 (Minute Nos. to follow) and 31 March 2016 (Minute Nos. to follow) as correct records.

4. 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**

5. Planning Working Group

To approve the Minutes of the Meeting held on 21 March 2016 (Minute Nos. 617 - 619) as a correct record.

2.6 15/503652/FULL, 15/503656/LBC and 15/503659/ADV 5 Market Street, Faversham, ME13 7AH

2.1 15/507023/FULL Dukes Shaw, Bexon Lane, Bredgar, ME9 8HG

6. Report of the Head of Planning

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

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered

to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call 01795 417328) by noon on Wednesday 6 April 2016.

7. Exclusion of the Press and Public

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

That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1, 2, 3, 4, 5, 6, and 7.

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). See note below.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and any employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes
  - (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) To make an order or direction under any enactment.
7. Information relation to any action in connection with the prevention, investigation or prosecution of crime.

8. Report of the Head of Planning

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To consider the attached report (Part 6).

**Issued on Wednesday, 30 March 2016**

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](http://www.swale.gov.uk)

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**7 APRIL 2016**

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

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

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

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

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

HRA Human Rights Act 1998

K&MSP Kent and Medway Structure Plan 2006

SBLP Swale Borough Local Plan 2008

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**PLANNING COMMITTEE – 7 April 2016**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>REFERENCE NO - 15/508571/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion of garage into habitable room.			
<b>ADDRESS</b> 10 Woodside Dunkirk Kent ME13 9NY			
<b>RECOMMENDATION</b> Approve			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objects			
<b>WARD</b> Boughton & Courtenay	<b>PARISH/TOWN COUNCIL</b> Dunkirk	<b>APPLICANT</b> Mr Rosita Higson <b>AGENT</b>	
<b>DECISION DUE DATE</b> 09/03/16	<b>PUBLICITY EXPIRY DATE</b> 09/03/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/503078/FULL	Two storey side extension as amended by drawing 005/1C	Approved	28/06/15
15/507884/NMAM D	Non material amendment to change window into a door on rear elevation of two proposed windows	Approved	02/11/15
SW/89/0656	Two storey side extension	Approved	26/06/89
SW/830993	Front and rear porch extensions	Approved	15/11/93
SW/99/0733	Renewal of Planning Permission SW89/0656 for two storey side extension	Approved	02/09/99
SW/94/0558	Renewal of SW/89/0656 for two storey extension	Approved	28/07/94

**1.0 DESCRIPTION OF SITE**

- 1.01 No. 10 Woodside is a two storey semi detached dwelling with white weatherboarding. There is hardstanding to the full width of the property frontage (over 9m) providing off road parking for two cars. To the rear is private amenity space.
- 1.03 The application site is characterised by residential properties, mainly detached and semi-detached dwellings. On the opposite side of the road the dwellings have off-street parking and landscaped gardens to the front of their properties.

- 1.04 The property has been altered recently and currently features a two storey side extension with a new garage on ground floor level (15/503078/FULL).

## **2.0 PROPOSAL**

- 2.01 This proposal is to convert the garage to a habitable room. The integral garage measures 2.8m wide x 5m in length. The external garage door would be removed and replaced with a new window. No additional windows to the rear elevation.
- 2.02 The garage conversion would provide additional ground space for a lounge. An internal wall separates the kitchen and integral garage would be removed.
- 2.03 Two off-road parking spaces would remain in the front of the property. The area of hard standing measures 9.8m wide x 3m depth. There is an additional space for parking 4.7m in depth and 2.2m wide.

## **3.0 PLANNING CONSTRAINTS**

None

## **4.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)  
 National Planning Practice Guidance (NPPG)  
 Development Plan: Saved policies E1, E19, E24 of the Swale Borough Local Plan 2008

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 One response has been received from the occupier at No.11 Woodside, objecting to The application on the following grounds:
- Two large cars and would not fit on front area and their cars are over the boundary sometimes.

## **6.0 CONSULTATIONS**

- 6.01 Dunkirk Parish Council objects to the application, referring to the history of the original planning application, to their original concerns over the loss of parking

*“We are concerned that the existing granted application that included a garage to continue with provision of an off road parking space is now being considered for conversion to a residential space before it has been completed. The Parish Council have reservations about the loss of an off road parking space In this road and for this reason we feel we must oppose this application.”*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and drawing referring to application reference 15/503078/FULL and 15/507884/NMAMD

## **8.0 APPRAISAL**

- 8.01 The main considerations in the determination of this planning application concern the impact that the loss of the garage as a parking space would have upon the character and appearance of the streetscene.
- 8.02 The proposed conversion would result in the loss of one garage. The question then is what impact will that have on the streetscene and on parking provision at the property. The entire frontage of the property is now hardsurfaced. The hardstanding to the front now provides off-road parking for two cars which is what the current parking standard for a three bedroom dwelling in a village location requires (see IGN3 from KCC). Parking spaces should normally be 2.5m wide, although between walls it is recommended by Kent Highways that this width should be enlarged to 2.7m. Here the area in front of the garage is 9.8m wide which more than complies with this guidance. The approval of this application is not likely to result in any erosion of soft landscaping to the front of the property, as can sometimes be the case with garage conversions. Therefore I do not consider that the proposal would be likely lead to new parking or visual amenity problems in the area as cars can already be expected to be parked across the entire frontage of the property on the existing hardstanding.
- 8.03 The parking provision available to the applicants will be the same two spaces as originally anticipated, and I do not consider that it would result in additional on-street parking potential due to the driveway for the property being adequate for the parking needs of the property. Nor do I find that the conversion of this garage will negatively affect the streetscene as the property's entire frontage is already paved over and used for parking.
- 8.04 Although granting permission for this application could encourage others to do the same, I do not consider this to be a reason for refusal. Each application should be considered on its own merits.
- 8.05 The application does introduce a window facing the highway in place of the existing garage door. The size and design of this window is in keeping with the other front windows and as such, I consider that the proposal is acceptable in relation to its impact upon neighbouring amenities.
- 8.06 No 9 submitted an application for change of use of garage to study and landscape frontage SW/07/1493 that was refused on 6<sup>th</sup> February 2008. However, an appeal was lodged APP/V2255/A/08/2080872 and planning permission was allowed on appeal (copy of decision attached to this item). Accordingly, as circumstances are almost identical I can see no alternative but to recommend approval here.

## **9.0 CONCLUSION**

- 9.01 This application for the conversion of an existing integral garage to a habitable room is considered acceptable and I therefore recommend that permission be granted.

## **10.0 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 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) The materials and new window to be used in the construction of the external surfaces of the conversion hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reasons: In the interests of visual amenity

### **Council's approach to the 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 acceptable as submitted and no further assistance was required

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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C: 12414



## Appeal Decision

Site visit made on 3 March 2009

by Frances Mahoney DipTP MRTPI IHBC

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: enquiries@pins.gsi.gov.uk

Decision date:  
17 March 2009

**Appeal Ref: APP/V2255/A/08/2080872**

**9, Woodside, Dunkirk, nr Faversham, Kent ME13 9NY**

- 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 Lee Hancock against the decision of Swale Borough Council.
- The application Ref SW/07/1493, dated 10 December 2007, was refused by notice dated 6 February 2008.
- The development proposed is a change of use of a garage to a study and landscape the frontage.

### Decision

1. I allow the appeal, and grant planning permission for a change of use of a garage to a study and landscape the frontage at 9, Woodside, Dunkirk, nr Faversham, Kent ME13 9NY in accordance with the terms of the application, Ref SW/07/1493, dated 10 December 2007, and the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) Prior to the garage conversion hereby permitted first being brought into use, the proposed frontage parking spaces and their associated accesses shall be completed and made available for their designated purpose.

### Main issue

2. I consider the main issue in this case is the effect of the proposed garage conversion on the character and appearance of the surrounding area.

### Reasons

3. Woodside is a pleasant established residential area, characterised in the main, by the mix of dwelling types many of which are set back from the road allowing for off-street parking to the front and/or side of the properties. When I visited the appeal site I saw cars parked both on Woodside, which has unrestricted parking and off-street in front of the dwellings. The presence of cars within property frontages and parked on the road is not an uncommon sight within the street scene.
4. No 9 Woodside is a semi-detached house extended to the side to include an integral garage which it is proposed to convert to a study. It is uncharacteristic of much of the development in the immediate area as it is set closer to the road. Due to the limited depth of the front garden area the existing driveway in front of the garage can only accommodate a small car. In my view in these

Appeal Decision APP/V2255/A/08/2080872

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circumstances it is impractical to use the drive as well as the garage for parking as it is not possible to open the garage door when a car is parked on the drive. Therefore at present in practical terms, only one off-street parking facility is available for the use of the residents of No 9.

5. The appeal proposes the conversion of the existing garage at No 9 to a study with the creation of two parking spaces in the front garden of the house. Both of the proposed parking spaces would be an improvement on the length of the existing driveway but would be marginally below the size promoted by the Kent Highway Services. However, in the restricted circumstances of the appeal property, the proposed frontage layout would offer the opportunity for two medium size cars to be parked off-street which in my view would be an improvement on the current situation. The scheme also includes two drop-curb accesses from Woodside which would be a further improvement as currently there are none serving the garage and driveway of No 9.
6. However, whether cars were parked on the proposed driveways or on the road, there would be some visual effect on the street scene. Taking into account the extent of the off-street parking available within Woodside, as well as the unrestricted nature of the available on-street parking, I consider that parked cars are already a feature within the street scene. The proposed frontage parking at No 9 would not unacceptably add to the extent of the effect of cars parked within the street scene, particularly as this aspect of the appearance of the street would be in constant flux as vehicles fulfil their function of travel. Therefore, in the specific circumstances of the appeal proposal, the conversion of the garage to a study would not unacceptably harm the character and appearance of the street scene. Thereby the terms of the Swale Borough Local Plan Policies E1, E24 and T3 and the guidance in the Council's supplementary planning guidance document *Designing an Extension: A Guide for Householders* would not be compromised.
7. In reaching my conclusion I have also taken into account the appeal decisions referred to by the Council. In the Ivory Close decision (APP/V2255/A/02/1100283), I have few details of the circumstances of this case. However, I have noted that the reported characteristics of the Ivory Close area appear to differ from the locality of the appeal site, in that garages and driveways were not common features in Ivory Close, where as the reverse is true of Woodside. The Inspectors in that instance, as well as in the Boughton case (APP/V2255/A/05/1191733), would have exercised their judgement on the evidence in relation to those particular cases. I have similarly used my judgement in respect of the evidence before me.
8. The Council has not suggested any conditions in the event the appeal is allowed. Therefore, I have considered the need for appropriate conditions in accordance with the guidance given in Circular 11/95 *The Use of Conditions in Planning Permissions*. To maintain the continuity of off-street parking at the appeal site I shall impose a condition requiring the completion of the parking area before the garage conversion is first brought into use.

*Frances Mahoney*

INSPECTOR

**REPORT SUMMARY**

<b>REFERENCE NO - 15/501134/FULL</b>			
<b>APPLICATION PROPOSAL</b> Change of use of a small granary shed, a newly built orangery and dungeon. These are in domestic use and the application is to enable them to be used as storage, packing and tasting facilities.			
<b>ADDRESS</b> Shurland Hall High Street Eastchurch Kent			
<b>RECOMMENDATION</b> Approve			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> In my view the proposal is in compliance with both national and local policies in relation to the rural economy, would make use of existing buildings, would not impact unacceptably upon highway amenities or the listed building, would protect the character of the countryside and would not cause significant harm to neighbouring amenities.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN COUNCIL</b> Eastchurch	<b>APPLICANT</b> Mrs Suzanne O'Donoghue <b>AGENT</b>	
<b>DECISION DUE DATE</b> 25/05/15	<b>PUBLICITY EXPIRY DATE</b> 25/05/15		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/06/0863	Alterations and repair in order to convert gatehouse into dwelling.	Approved	01/09/2006
SW/12/1533	Construction of conservatory.	Approved	30/01/2013

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 Shurland Hall is a grade II\* listed building and Scheduled Ancient Monument situated within the countryside to the north east of Eastchurch Village Centre.
- 1.02 The building is the former gatehouse to the hall proper and has been converted to residential use under SW/06/0683. It is situated at the end of a long private access road and views from the public highway are limited due to the distance and a number of mature trees that are situated between the public highway and the property.
- 1.03 Shurland Hall is located within substantial grounds and includes a number of outbuildings and a large pond which contributes towards the attractive entrance to Shurland Hall.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the change of use of the existing granary shed, the orangery constructed under SW/12/1533 and the part of the building situated below this, described in the application as a dungeon, from domestic use to storage, tasting and packing facilities associated with a specialist champagne business.
- 2.02 The granary shed is located approximately 15m from Shurland Hall and the orangery and dungeon are located on the south side of the building.
- 2.03 The champagne would be stored at Shurland Hall and delivered on two / three occasions per year. From there an external carrier would be used to whom cases of champagne would be delivered on an ad hoc basis when the orders were received.
- 2.04 The application also proposes tasting events which would take place on a maximum of 4 occasions per year in the existing orangery. The projected number of people at each event would be 40.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 Listed Building - Grade II\* Shurland Farm, High Street, Eastchurch, Sheerness
- 3.02 Scheduled Ancient Monument

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

#### National Planning Policy Framework

- 4.01 The National Planning Policy Framework (NPPF) at paragraph 28 states that the sustainable growth and expansion of all types of business and enterprise in rural areas, both through the conversion of existing buildings and well designed new buildings should be supported.
- 4.02 Paragraph 132 states that *“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. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”*

#### Swale Borough Council Local Plan 2008

- 4.03 Policy E1 sets out standards applicable to all development, saying that it should be well sited and appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms;
- 4.04 Policy E6 sets out that the quality, character and amenity value of the wider countryside will be protected and where possible enhanced. Development proposals will only be permitted, when (amongst other criteria) it is the re-use or adaption of an existing rural building, in accordance with Policy RC1;



- 4.05 Policy E14 states that proposals which include any change of use, affecting a Listed Building, and/or its setting, will only be permitted if the building's special architectural or historic interest, and its setting, are preserved;
- 4.06 Policy RC1 states out that proposals that would help to diversify the rural economy, provide new rural jobs and services or provide environmentally positive countryside management will be permitted provided that the proposal is in scale with the locality; that the site retains its rural character; no detriment to landscape character; does not cause a significant increase in traffic; makes maximum use of existing buildings and does not detract from the historical, architectural or landscape interest, character or appearance of the buildings.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Surrounding properties were sent a consultation letter and a site notice was displayed close to the site. No responses were received.

## **6.0 CONSULTATIONS**

- 6.01 Eastchurch Parish Council objects to this application with the following comments:

*"Not enough information had been provided. The application reads as a commercial operation which gives no information on the degree of impact on a listed building and particularly the degree of impact on large vehicles travelling through the village and the scale of operation envisaged in the future. Contrary to Policy RC1."*

- 6.02 Historic England state that *"the application(s) should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice."*

- 6.03 The Council's Conservation Officer responded stating that *"I am content that the proposed change of use does not impact on the listed building, its setting or any features of significance which it possesses. Consequently I can support the application."*

- 6.04 KCC Highways and Transportation consider *"that the buildings and scale of the operation are fairly small in size, and this particular enterprise is not envisaged to generate much vehicular activity. The details suggest that cases of champagne will be delivered two or three times a year, and any sales would be transported to a courier depot once a day by car for onward delivery. I do not think the traffic movements associated with this proposal would be perceptible on the highway network, or should give any cause for concern."*

*Consequently, I have no objections to the proposals."*

- 6.05 The Council's Environmental Protection Manager raises no objection.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and drawings referring to application reference 15/501134/FULL.

## **8.0 APPLICANT'S SUPPORTING COMMENTS**

- 8.01 *“Andromeda Boru Ltd is a very small business dealing in specialist champagnes sold by the case. These champagnes are ‘Grand Cru’ and only bought from grower/makers which are small in number and rare in the UK. The scale of operation envisaged is that initially there would be one or two occasions per year for a tasting event which would be mainly designed to spark public relations for the business. The maximum number of people envisaged at such events would be 40 people. In the future it is unlikely that the number of events would exceed 4 per year as these events are loss makers for the business.*

*The application for planning permission is to enable us to have a premises licence so that we can sell via the internet which in our experience is how most people nowadays want to buy wines. In order to sell via the internet you have to have a premises licence.*

*We will be using a carrier based in Aylesford to whom we would deliver any cases that had been ordered on a daily basis/as and when ordered, initially in an estate car but if things developed we might have to purchase a small van. This is the maximum of our ambition. If the small Van was delivering to Aylesford daily this would be a minimum of ten times any turnover we have achieved previously.*

*We envisage stock ordering on two/three occasions per year which arrives in a van on pallets similar to those used for Amazon/Ocado/Tesco etc.*

*Before arriving in Sheppey the business was run for 6 years from Little Hautbois Hall in Norfolk (a Grade 2\* listed Tudor Hall dating from 1553 which we restored over a period of four years) and before that for seven years in Woodcroft Castle near Peterborough (a grade 2\* listed 13th century moated castle).*

*With regard to the listed building I can state that in our experience the business causes little noticeable impact on traffic to and from the building (excepting tasting occasions). Equally anyone from the Island who does wish to visit Shurland Hall and see inside the Hall is afforded the ability to do so by simple requesting, via the phone/internet to purchase and collect in person.*

*In Norfolk the business was promoted by the Council as part of their efforts to attract tourism to the area and there was no direct selling from the internet so people had to collect in most cases. The maximum of visits would be three or four per month. We currently have an agreement with the Bluetown heritage centre to allow their tour bus to visit Shurland each Saturday morning in the summer months and the Eastchurch primary school visit the wildflower meadow and lake on occasion.”*

## **9.0 APPRAISAL**

### **Principle of Development**

- 9.01 The site lies within the countryside. In overall terms both national and local policies support the growth of business in rural areas subject to the proposal meeting a number of criteria. In this case the application proposes a change of use and no alterations will be made to the existing building which is in compliance with policy. Furthermore, I have consulted with KCC Highways who take the view that due to the limited size of the operation the impact upon highway amenity would not be unacceptable. In my view due to the small scale of the business and the re-use of existing buildings the impact upon the countryside would be negligible. I consider the principle of development in this case is firmly established.

### **Impact upon designated heritage assets**

- 9.02 The application site is both a grade II\* listed building and a Scheduled Ancient Monument. The Local Planning Authority is required to 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. In this instance, I have consulted with both Historic England and the Council's Conservation Officer who support the application.

### **Residential Amenity**

- 9.03 The application site is set in substantial grounds with the closest residential properties located close to the entrance to the site some 230m away from Shurland Hall. The proposed tasting events if not restricted would have the potential to create a disturbance to nearby residents and as such I have liaised with the applicant regarding this element of the proposal. They have confirmed that there would be a maximum of 4 tasting events per year with the number of people at each event not exceeding 40.
- 9.04 In addition to the above, the hours of use have been indicated on the application form as being 10.00 – 22.00 Monday - Sunday (including Bank Holidays). In my view a tasting event, attracting up to 40 people and not finishing until 10pm could have the potential to have an impact upon neighbouring amenities. As such, I have liaised with the applicant who has stated that the events would be finished by 20.30. Therefore I am of the opinion that taking into account the distance between Shurland Hall and the closest neighbouring properties, the tasting events finishing at 8.30pm on any day would not give rise to an unacceptable impact upon residential amenities. However, to ensure neighbouring amenities are protected I have recommended a condition which restricts the number of events, attendees and hours of use as set out above. I believe this to be satisfactory.

### **Other Matters**

- 9.04 I note the objection received from the Parish Council and respond as follows. In my view there is now sufficient information submitted in order to be able to determine the application and to make a judgement as to the impact on both the listed building and highway amenities, both of which I consider to be acceptable and which have been dealt with above.

## **10.0 CONCLUSION**

- 10.01 In overall terms I am of the view that the proposal is in compliance with both national and local policies in relation to the rural economy, would make use of existing buildings, would not impact unacceptably upon highway amenities or the listed building and would protect the character of the countryside. I am also of the opinion that the proposal would not cause significant harm to neighbouring amenities. I recommend that planning permission be granted.

## **11.0 RECOMMENDATION – GRANT** Subject to the following conditions:

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

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

- (2) The number of 'tasting events' shall not exceed 4 in any calendar year, with no more than 40 guests in attendance at any event and shall finish no later than 20:30 hours.

Reasons: To protect 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.

## REPORT SUMMARY

<b>REFERENCE NO - 15/510368/FULL</b>			
<b>APPLICATION PROPOSAL</b> Single storey and first floor rear extensions, insertion of lift and front first floor extension.			
<b>ADDRESS</b> The Willows, The Broadway, Minster-on-Sea, Kent, ME12 2DE			
<b>RECOMMENDATION - Approve</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal would not give rise to unacceptable harm to residential or visual amenities, including highway safety and inconvenience.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection.			
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN COUNCIL</b> Minster On Sea	<b>APPLICANT</b> Mrs Ruby Chambas-Annan <b>AGENT</b> Mr Dave Chamberlain	
<b>DECISION DUE DATE</b> 01/03/16	<b>PUBLICITY EXPIRY DATE</b> 04/02/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/86/1188	Change of use to residential care home and extension	Approved	29/10/1986
SW/91/0126	Extensions and alterations	Approved	08/08/1986
SW/95/0209	Extension to bedrooms	Approved	02/03/1995
14/500124/FULL	Single storey rear extension and lift shaft from ground floor to first floor	Approved	09/12/2014

### 1.0 DESCRIPTION OF SITE

- 1.01 The Willows is a two storey detached building situated on a corner plot forming the junction of Southsea Avenue with The Broadway. It has been used as a residential care home following a change of use approval in 1986.
- 1.02 The property has a small frontage with a generous amount of private amenity space to the rear. This can be accessed via the main building or a side gate facing onto Southsea Avenue.
- 1.03 It is set well forwards of the adjacent row of terraced dwellings in The Broadway, all off which have much larger front gardens than rear gardens.
- 1.04 The street scene here is particularly mixed, characterised by residential dwellings on either side of varying designs and sizes, and land adjacent to Park Lodge opposite which is currently seeking retrospective planning permission for the grazing of horses and the associated outbuildings.

### 2.0 PROPOSAL

- 2.01 The proposal seeks planning permission for the erection of a single storey rear extension, a first floor rear extension, a first floor front extension and the installation of a lift shaft from the ground floor to the first floor to the rear.
- 2.02 The extension at ground floor level would have an additional rear projection of 3.5m and would be 7.6m in width with a flat roof measuring 2.7m in height.
- 2.03 The first floor rear extension would extend 4.25m over the existing ground floor flat roof and would be 7.5m in width. It would have a pitched roof measuring 5.1m in height to the eaves with an overall height of 8m to match the existing ridgeline.
- 2.04 The lift shaft to the rear would have a projection of 1.5m and would be 1.95m in width with a flat roof measuring 5.4m in height.
- 2.05 The first floor front extension would project 3m over the existing balcony and would be 3m in width. It would have a pitched roof measuring 5.1m in height to the eaves with an overall height of 6.6m.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 Environment Agency Flood Zone 3

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

- 4.01 The National Planning Policy Framework (NPPF) and The National Planning Practice Guidance (NPPG): The NPPF and NPPG are relevant in that they encourage good design and seek to minimise serious amenity concerns.
- 4.02 Development Plan: Saved policies E1, E19, E24, C1 and T3 of the adopted Swale Borough Council Local Plan 2008 are relevant in that they relate to general development criteria and design, community services and and parking considerations.
- 4.03 Supplementary Planning Documents: The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is also relevant, and remains a material consideration having been through a formal review and adoption process. The Adopted SPG entitled "Designing an Extension - A Guide for Householders", was adopted by the Council in 1993 after a period of consultation with the public, local and national consultees, and is specifically referred to in the supporting text for saved Policy E24 of the Local Plan. It therefore remains a material consideration to be afforded substantial weight in the decision making process.
- 4.04 National Planning Policy Framework (NPPF)
- 4.05 The NPPF was released on 27th March 2012 with immediate effect, however, paragraph 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."
- 4.06 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.

4.07 This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. Saved policies E1, E19, E24 and T3 are considered to accord with the NPPF for the purposes of determining this application and as such, these policies can still be afforded significant weight in the decision-making process.

## **5.0 LOCAL REPRESENTATIONS**

5.01 None have been received.

## **6.0 CONSULTATIONS**

6.01 Minster-on-Sea Parish Council objects to the proposal on the grounds that it would lead to over intensive development of the site. It also comments that there is insufficient parking for the existing service, leading to parking on a dangerous corner.

## **7.0 BACKGROUND PAPERS AND PLANS**

7.01 Application 14/500124/FULL sought planning permission for the same ground floor rear extension and lift shaft applied for in this application. This was approved but not built.

7.02 The application to which this proposal refers to is 15/510368/FULL.

## **8.0 APPRAISAL**

8.01 The application site is located within the defined built up area boundary of Minster in which the principle of development for residential extensions is acceptable subject to amenity and other relevant policy considerations.

8.02 Policy C1 of the Local Plan seeks support for proposals which maximise the use of existing public and private community services and facilities. In this case, I have no reason to doubt the fact that there is a continued need for expansion here and consider that the proposal would certainly maximise the use of the existing site. I am therefore of the opinion that any amenity and highway concerns should be considered carefully against the benefit of this essential community facility.

8.03 The site is situated within Flood Zone 3. There would however be no additional bedroom space on the ground floor and the agent has confirmed that the finished floor levels would be no lower than the existing.

8.04 The main considerations here would be the impact of the proposal on residential and visual amenity, including the impact upon parking in regards to highway safety and convenience.

### **Residential Amenity**

8.05 In reference to rear extensions, paragraph 5.8 of the SPG states that:

*“If your neighbour’s house projects rearward of yours or already has an extension on the back, then the Borough Council may allow a rear extension to the distance of the adjacent property or extension...”*

Paragraph 5.9 of the SPG states that:

*“On well spaced detached properties or where an extension is to be built away from the boundary a larger extension may be acceptable.”*

In this case, the property is a large detached property which is set 4m forwards of the adjacent dwelling, 7 Coastguard Cottages. There would remain a 1m gap to the boundary and the extension would bring the rear of the building almost in line with the front of number 7. To the north, Southsea Avenue separates the building from the nearest residential building on this side.

I also note that this element of the proposal was approved under the last application, and I therefore take the view that there would be no significant harm to residential amenity in terms of overshadowing.

- 8.06 This element of the proposal would be served by patio doors and windows in the rear elevation, a window in the southern flank elevation, and a window and door in the northern flank elevation.

There are no other buildings directly to the rear of the site. To the north, there is a level change so that the boundary fence is higher than the top of the proposed window and door. To the south, the neighbouring property is set significantly back from the host site so that any new windows would face into the front garden.

Again, I consider the fact that this element of the proposal, with this layout of windows and doors, was approved in the last application. I subsequently take the view that there would be no harm to residential amenity in terms of overlooking.

- 8.07 The lift shaft would be built in an existing inset part of the building on the northern flank elevation. It would be partly hidden by the boundary fence which is set higher than the building and there would be no external windows or doors. I therefore take the view that there would be no harm to residential amenity in terms of overshadowing or overlooking. Again, this element of the proposal was approved in the last application.

- 8.08 In reference to first floor rear extensions, paragraph 5.7 of the SPG states that:

*“A first floor extension should not exceed 1.8m. Leaving a gap to the boundary with your neighbour may offset this requirement slightly depending on the distance allowed.”*

The first floor extension would have a rear projection of 4.25m over the existing ground floor extension. However in this case, the neighbouring property is set significantly back from the host site.

There would remain a gap of approximately 7m from the first floor extension to the front of number 7 Coastguards Cottages to the south. I therefore take the view that there would be no harm to residential amenity in terms of overshadowing.

There are no side windows proposed and number 7 has 1 ground floor window in its flank elevation. This is set further back however, and due to the level change here, is set lower than the host site. I therefore take the view that there would be no harm to residential amenity in terms of overlooking.

- 8.09 In reference to front extensions, Paragraph 5.3 of the SPG states that:



*“The Borough Council normally requires that front additions are kept to a maximum of 1.2m.”*

In this case, the extension would project 3m, however this would be over the existing balcony and would be in line with the existing front, first floor extension. There would remain 4m of balcony space and there are no other buildings directly on either side or to the front of the site. I am therefore of the opinion that there would be no harm to residential amenity in terms of overlooking or overshadowing, although as this element would form a new bathroom, I consider it necessary to condition the window to be obscure glazed.

### **Visual Amenity**

- 8.10 All elements of the proposal would be built in materials to match the existing house. The ground floor extension and lift shaft would have flat roofs while the first floor extensions would have pitched roofs to match the existing. I therefore consider that there would be no harm to the character or appearance of the dwelling or the wider area in this regard.
- 8.11 The various elements of the proposal would amount to a significant addition to the building. That being said, this is a large detached building situated on a corner plot. Furthermore, the first floor elements of the proposal would project over the existing building meaning that the increase in footprint would be limited to the ground floor rear extension and lift shaft. On balance, I take the view that scheme of extensions would sit comfortably on the existing building and would be appropriate in scale.
- 8.12 As a spacious corner plot, all elements of the proposal would be visible from the street scene. The street scene here is particularly mixed with other dwellings of varying designs and sizes, open land opposite currently being used to graze horses, and a holiday park and hotel nearby.

However, The Willows, in my opinion is already a relatively prominent feature of the street scene, being set so far forwards and I do not feel that the proposed scheme of extensions would make it any more prominent than it already is, especially given that the main increase in space would be to the rear. I therefore take the view that the proposal would retain the traditional appearance of the building and would not be harmful to the character of the street scene.

### **Highway Safety and Convenience**

- 8.13 Paragraph 7.0 of the SPG states that:

*“Extensions which reduced available parking space and increase parking on roads are not likely to be accepted.”*

In this case, there is 1 off street parking space provided to the rear of the property, accessible via gates off Southsea Avenue. The proposal would not reduce available parking space and the main consideration here is the potential for any additional parking.

The number of full time staff would increase from 2 to 3, potentially giving rise to an additional parked car during staff working hours. The number of bedrooms would increase by 3, potentially giving rise to additional, albeit temporary, visitor parking.

- 8.14 The Broadway is a main, classified road and I would not normally consider an increase in on street parking here to be acceptable. However, the site also lies adjacent to Southsea Avenue which is an unclassified, residential road. The road is wide enough for the safe parking of vehicles as well as traffic flow in my opinion, and is clearly used for on street parking already. I therefore take the view that the potential slight increase in on street parking here would not give rise to any significant problems in terms of highway convenience or safety.

## 9.0 CONCLUSION

- 9.01 Taking into account all of the above; the proposal would not, in my view, give rise to any significant harm to residential or visual amenity. While there may be a small increase in on street parking on Southsea Avenue (although not in a manner detrimental to highway safety in my opinion), I consider the benefit of maximising the use of this community facility to outweigh any harm in this regard.

## 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.

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

Reasons: In the interests of visual amenity.

- (3) The development hereby approved shall be carried out in accordance with the approved drawing numbers DC/065 and DC/120.

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

- (4) Before the development hereby permitted is first used, the proposed bathroom window in the first floor western elevation to the extension shall be obscure glazed and shall be kept as such in perpetuity.

Reasons: To safeguard the privacy of current and future occupiers

### 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 acceptable as submitted and no further assistance was required.

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.

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**REPORT SUMMARY**

<b>REFERENCE NO - 15/507311/FULL</b>			
<b>APPLICATION PROPOSAL</b> Proposed new dwelling at land rear to 66 Park Drive (Revised Scheme).			
<b>ADDRESS</b> 66 Park Drive Sittingbourne Kent ME10 1RD			
<b>RECOMMENDATION: Approve, subject to the receipt of amended plans</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposed dwelling would not harm residential or visual amenity, or highway safety or convenience, and is acceptable in all other respects.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Councillor Conway			
<b>WARD</b> Woodstock	<b>PARISH/TOWN COUNCIL</b> Tunstall	<b>APPLICANT</b> Mr Neil Diddams <b>AGENT</b> Kent Design Studio Ltd	
<b>DECISION DUE DATE</b> 02/11/15	<b>PUBLICITY EXPIRY DATE</b> 02/11/15	<b>OFFICER SITE VISIT DATE</b>	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
14/505472/FULL	Proposed new dwelling	REFUSED	7/4/15
The proposed dwelling, by virtue of its bulk, scale and, in particular, width in relation to the size of the plot, would give rise to a cramped development out of keeping with the open character of the surrounding street scene and thus harmful to local visual amenity.			

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 66 Park Drive is a detached house situated within the built up area of Sittingbourne. It is set back from the road with parking to the side, a garage (original and too small for modern use) to the rear, a front garden and a generous rear garden.
- 1.02 The rear garden measures approximately 51m deep x 9.2m wide and backs on to a turning head on Roseleigh Road, adjacent to nos. 34 and 34a – two semi-detached chalet bungalows. The rear half (approximately) of the garden is sectioned off by a low picket fence and appears to have been previously used as an allotment / vegetable patch.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for a new chalet bungalow, with access taken from Roseleigh Road. It is a revised scheme, submitted to address the reason for refusal of application 14/505/472/FULL, referred to above, which was refused on the basis of the bulk and scale of the dwelling proposed under that application.

2.02 The proposed dwelling would be set back from Roseleigh Road by 6.2m, would be 10.1 deep, (a maximum of 12m deep including a front bay window and small rear conservatory) 6.5m wide and 6.7m to the ridge of its roof. Two pitched roof dormer windows are proposed to the front (serving a bedroom each) and a single dormer window and roof light to the rear (serving a bedroom and bathroom respectively).

2.03 2 parking spaces are proposed – one to the side boundary with no, 64 Park Drive, and one to the front, and a 12.6m deep garden would be proposed to the rear.

2.04 The dwelling would be set in by 2.5m from the side boundary with no.62 Park Drive and 0.3m from the side boundary with no.68 Park Drive. It would be located in excess of 30m from the dwellings to the rear in Park Drive and 15m from no.34A Roseleigh Road, the closest dwelling to the front.

2.05 An existing mature tree, fronting Roseleigh Road, would be removed to allow access to the site. Other trees, which existed at the time of the last application, and are shown on the drawings for this scheme, have recently been removed by a third party.

### 3.0 SUMMARY INFORMATION

	Refused scheme	Proposed	Change (+/-)
Approximate Max. Ridge Height	7m	6.7m	- 0.3m
Approximate Max. Eaves Height	2.7m	2.5m	- 0.2m
Approximate Max. Depth	13m	10m (max12m)	- 3m (max)
Approximate Max. Width	8.2m	6.5m	-1.7m
Parking Spaces	3	2	-1
No. of Residential Units	1	1	-

### 4.0 PLANNING CONSTRAINTS

None

### 5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are relevant in terms of encouraging sustainable housing development within existing urban areas. They also encourage good design standards and minimising the potential impacts of any development upon the amenity of neighbouring residents.

5.02 The adopted Swale Borough Local Plan 2008 echoes a similar sentiment, and policies E1, E19, H2 and T3 in particular encourage the provision of high-quality housing development within sustainable locations, with adequate parking provision, and minimising potential amenity impacts for local residents.

5.03 The publication draft of the emerging Local Plan, entitled Bearing Fruits 2031, was agreed by Members at Full Council late last year and, as such, carries some weight in the determination of planning applications. Policies DM14, DM16, DM19 are relevant in this instance.

- 5.04 The Council's adopted Supplementary Planning Guidance entitled "Designing an Extension" is relevant in that it stipulates that there should be a minimum rear-to-rear separation distance between dwellings of 21m in order to minimise the opportunities for mutual overlooking.

## 6.0 LOCAL REPRESENTATIONS

- 6.1 10 representations have been received, all objecting to the application. They are summarised as follows:

- An additional access here would be dangerous;
- The road is too narrow to accommodate traffic from an additional dwelling;
- The elderly neighbour to the application site would find building works very distressing;
- This would set a precedent;
- Loss of privacy to gardens and dwellings;
- Will overshadow adjacent garden
- Will alter character of the area;
- Noise and disturbance;
- Plot is unsuitable for a house;
- Will look out of place;
- Issues relating to deliveries during construction, including parking, noise and disturbance;
- Increase in on street parking;
- Turning head in Roseleigh Road is prone to flooding due to the inadequacy of the soakaway. Surface water from the dwelling will increase run off to this soakaway and increase water levels during severe rainfall, resulting in flooding of dwellings in Roseleigh Road;
- Overshadowing of properties in Roseleigh Road;
- Loss of trees would be harmful;
- Increase in pollution;
- Will cause a highway safety issue;

## 7.0 CONSULTATIONS

- 7.01 The application has been called before the Planning Committee by Councillor Conway.

- 7.02 Tunstall Parish Council raise objection and comment as follows:

*"Councillors have considered this application and wish to object to the application. The proposal is contrary to the provisions of policies T1, E1, E19 and H2 of the adopted Swale Borough Local Plan 2008*

*The proposal is out of keeping with the character of the local street scene and it would cause over intensification of the site, and lead to unacceptable disruption to the Highway, by the formation of a further access, decreasing safety, on a road that is of unsuitable width. The area is already subject to pluvial flooding and the increased hard standing area would compound the problem. There is very little incline from the road to the front door of the neighbouring property so any increase in surface water would compromise the integrity of the houses.*

*The extra cars would cause problems for the tight turning circle. The Parish Council would also like to object to the loss of trees, which we understand have already been removed, already causing loss of residents visual amenity”.*

7.03 Southern Water do not raise objection, subject to the informative below.

## **8.0 BACKGROUND PAPERS AND PLANS**

Application documents, plans and drawings for applications 14/505472/FULL and 15/507311/FULL

## **9.0 APPRAISAL**

- 9.01 The site is located in the built up area of Sittingbourne, and the development proposed is acceptable as a matter of principle. In addition, the proposed dwelling is located a sufficient distance from surrounding dwellings so as to not give rise to a harmful degree of overlooking or overshadowing. Some overshadowing of part of the garden of the dwelling to the north would occur, but this property (no.64 Park Drive) has a garden of substantial size, and I do not consider that the proposed dwelling would cause demonstrable harm in this respect.
- 9.02 The design of the dwelling is acceptable – it is traditional in form and would not appear out of character with the existing dwellings in the streetscene.
- 9.03 I note the objections of local residents in respect of highway matters. However – the number of off street parking spaces proposed conforms with KCC parking standards for a 3 bedroom dwelling, (although one of these – the space to the side of the dwelling is slightly undersized – I am seeking amended plans in this respect) and I do not consider that an additional access onto a turning head at the end of a cul de sac is likely to give rise to significant harm to highway safety – vehicles would be unlikely to be travelling at speed in this location.
- 9.04 With regards to surface water flooding, I recommend imposing the condition below, requiring details of foul and surface water disposal to be submitted and approved prior to works being carried out.
- 9.05 I note concerns regarding disruption during construction. This is not a material consideration that would justify refusal of the proposal. I do though recommend imposing the condition below in respect of hours of construction, in order to minimise harm to residential amenity during this period.
- 9.06 The loss of the existing tree is regrettable. However – it is not protected, and could be removed without further recourse to the Council. I therefore give limited weight to this issue.
- 9.07 The key issue here is, therefore, whether the proposed development overcomes the previous reason for refusal – namely whether the dwelling would amount to a cramped form of development, out of character with that of the area.
- 9.08 I do not consider that the addition of a single dwelling here would give rise to a significant or harmful increase in noise and disturbance, nor do I consider that it would set a precedent – the application has to be considered on its merits.



- 9.09 As I set out in the table at section 3.0 above, this proposal represents a reduction in bulk and scale from that previously refused by Members. The reduction in scale is significant – the dwelling would now be set in by approximately 2.5m from the side boundary of the site (this will be increased if the plans are amended in order to widen the parking space to the side of the dwelling). I do not consider that the dwelling appears cramped, nor that it would harm the character of the streetscene. It would be set back from the frontage with Roseleigh Road, and would not appear obtrusive. I consider that the previous reason for refusal has been satisfactorily addressed.
- 9.10 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments under 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

## 10.0 CONCLUSION

- 10.01 On the basis of the above, I consider the proposed dwelling to be acceptable in respect of its impact on visual and residential amenity, and on highway safety and convenience. I recommend approval.

## 11.0 RECOMMENDATION – GRANT Subject to the following conditions

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

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

- (2) The development hereby permitted shall not be carried out other than in complete accordance with the details shown on drawing 1067-01A, received 7<sup>th</sup> September 2015.

Reason: For the avoidance of doubt.

- (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.

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

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

Reasons: In the interest of visual amenity.

- (5) No development shall take place until full details of the method of disposal of foul and surface waters have been submitted to and approved by the Local Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: To ensure the development is properly serviced, and in order to prevent pollution of water supplies.

- (6) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), 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.

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

Reason: In the interests of highway safety and convenience.

- (8) 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.

- (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.

- (11) The vehicle parking area hereby approved, as shown on drawing 1067-01A, received 7<sup>th</sup> September 2015, shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

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

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

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

Reason: In the interests of residential amenity.

## **INFORMATIVES**

A formal application for connection to the public sewerage system is required in order to service this development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire, SO21 2SW (tel: 0330 303 0119) or [www.southernwater.co.uk](http://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 minor changes required to the application and these were agreed, whereupon the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **Habitats Regulations Assessment**

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

The application site is located within 6km of The Swale Special Protection Area (SPA) and Ramsar site and the Medway Estuary and Marshes Special Protection Area and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of

the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

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**REPORT SUMMARY**

<b>REFERENCE NO - 15/509126/FULL</b>			
<b>APPLICATION PROPOSAL</b> Demolition of existing workshops and garages and erection of 2no. two bedroom and 2no. one bedroom studio units			
<b>ADDRESS</b> Rear Of 44A Epps Road Sittingbourne Kent ME10 1JD			
<b>RECOMMENDATION</b> Approve			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal would remove an inappropriately located B2 use whilst providing housing in a sustainable location without impacting unacceptably upon residential, visual or highway amenities.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Neighbour objections and called in by Councillor Truelove			
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr I & J Brenchley, Henley <b>AGENT</b> Nigel Sands & Associates	
<b>DECISION DUE DATE</b> 07/01/16	<b>PUBLICITY EXPIRY DATE</b> 14/12/15		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/10/1176	Demolition of existing workshops and garages. Erection of one storey 1 bed detached dwelling and two storey block of five 1 bed flats with rooms in the roof space.	Refused and dismissed on Appeal (Ref: APP/V225 5/A/11/21 53071)	22.11.2010

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The majority of the application site, known as No.44A Epps Road is comprised of a number of workshop / store buildings (B2 use) with a yard area to the front. The southern part of the site consists of a number of lock up garages.
- 1.02 The site is located in the built up area, in a predominately residential area, behind the main frontage development facing Epps Road. To the east of the site lie the properties in Ufton Lane and to the west properties in Rock Road. In both cases the rear of these properties face toward the application site.

- 1.03 The site is accessed from Epps Road to the south. A number of garages serving the properties in Rock Road and Ufton Lane are also situated within close proximity of the application site.

## **2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the demolition of the existing workshops and garages and the erection of 2no. two bedroom units and 2no. one bedroom units in a 1 ½ storey terrace with rooms in the roofspace. The existing access from Epps Road would be used.
- 2.02 The proposed terrace would measure 25m in width and 9m in depth. The eaves would be 2.7m and the building would measure 7.9m to the ridge. Four dormer windows and two rooflights are proposed on the front roofslope with 8 rooflights on the rear roofslope.
- 2.03 The central part of the building would be left open at ground floor level to provide two parking spaces whilst an additional two spaces would be provided, one to the side of the southern most unit and one in front of the northern most unit.
- 2.04 Each property will consist of lounge / dining room, kitchen and w.c. at ground floor level with bedroom(s) study / store and a bathroom at first floor level. Private amenity space to the rear of the property will be provided ranging between 7.3m – 8.6m in depth. A bin store and cycle space is also provided for each dwelling.
- 2.05 The proposed materials are facing brickwork, slate roof and uPVC casement windows.

## **3.0 PLANNING CONSTRAINTS**

- 3.01 None

## **4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 The NPPF and the National Planning Policy Guidance (NPPG) both advocate provision of new residential development within sustainable urban locations close to local shops and services, subject to good design and no serious amenity issues being raised.

### Development Plan

- 4.02 Policy E1 sets out standards applicable to all development, saying that it should be well sited and appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms;
- 4.03 Policy E19 states that the Borough Council expects development to be of high quality design and should amongst other requirements provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details;
- 4.04 Policy B1 seeks to retain land and buildings currently in employment use unless it is inappropriately located; demonstrated by market testing that it is no longer suitable for employment use or there is insufficient demand or is allocated in the Plan for other purposes.



- 4.05 Policy H2 states that planning permission for new residential development will be granted for sites within the defined built up areas, in accordance with the other policies of the Local Plan.
- 4.06 Policy T3 states that the Borough Council will only permit development if appropriate vehicle parking is provided in accordance with Kent County Council parking standards.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Surrounding properties were notified of the application and 4 letters of objection have been received, raising the following summarised objections:
- Proposal would overlook properties in Rock Road and Ufton Lane;
  - Proposal would be overbearing and cause loss of light to surrounding properties;
  - Proposed building is larger in scale than the existing;
  - Access to the site is inadequate;
  - Emergency vehicles would not be able to access the site;
  - Refuse bins would have to be taken to the top of the alley;
  - Inadequate parking provision;
  - Materials not in keeping with the area and the building would be out of character;
  - Drainage in the area is inadequate;
  - Additional traffic / pedestrian movements would create noise;
  - Do not wish to lose access provided by the rear gate of No.45;
  - The rear to rear distance between the proposed and existing dwellings is insufficient;
  - Proposal would affect property value;

## **6.0 CONSULTATIONS**

- 6.01 The Council's Environmental Protection Manager has requested conditions relating to contaminated land and hours of construction.
- 6.02 Southern Water recommended a condition relating to the proposed means of foul and surface water sewerage disposal and an informative relating to connection to the public sewerage system.
- 6.03 The Environment Agency require conditions relating to contamination and site remediation and also recommend informatives in relation to waste, foul drainage and pollution prevention.
- 6.04 Councillor Truelove confirmed that *"I would like this to be called in for consideration by the Planning Committee because of local concerns about loss of amenity."*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence related to 15/509126/FULL, SW/10/1176 and appeal reference V2255/A/11/2153071.

## **8.0 APPLICANT'S SUPPORTING DOCUMENTS**

- 8.01 A Phase 1 Contamination Assessment, Sustainability Statement and Design and Access Statement has been submitted with the application

## 9.0 APPRAISAL

At the outset it is important to note that a previous application on this site was refused and then dismissed at appeal. The appeal was dismissed on the grounds that the proposal would be harmful to the living conditions of occupiers of dwellings in Ufton Lane, causing unacceptable loss of outlook and privacy. As such, this revised scheme has now come forward which seeks to address the Inspectors conclusions.

### Principle of Development

- 9.01 The application refused under SW/10/1176 and subsequently dismissed at Appeal was considered to be acceptable in principle. Policy B1 of the Local Plan which deals with retaining employment sites remains the adopted policy and as such I reach the same conclusion as was considered in the previous application on the site in regards to this. The policy requires existing employment sites to be retained unless it is demonstrated that the site is inappropriately located for employment use and having an unacceptable environmental impact. The B2 use of the site, located in relatively close proximity to existing residential dwellings would in the future, potentially have a significant impact upon neighbouring amenities, even if it doesn't at the current time. Further to this, policy B1 also requires the applicant to demonstrate that a mixed use of the site could not satisfactorily be achieved as opposed to a wholly residential scheme. In my view, given the comparatively small size of the site and its location, a mixed use scheme here would be difficult to achieve. Finally, because of the small size of the site, I do not consider that its loss as an employment site would materially harm the provision of employment space within the Borough in general or Sittingbourne in particular. The site is located within the built up area, close to the town centre and is therefore in my view in a sustainable location.

### Visual Impact

- 9.02 The site lies to the rear of residential properties in Ufton Lane and Rock Road and is set back from the frontage development which exists on Epps Road. The proposed building, being comprised of two storey dwellings would be of a comparative height to the surrounding properties and as such I consider that the scheme would not be at all prominent from public vantage points. The site is also set lower than Epps Road and as such I am of the view that this would further reduce its impact.
- 9.03 I note local residents concerns regarding the materials used and the design of the building and I respond as follows. The proposed materials as stated on the application form will be comprised of facing brickwork and a slate roof. To ensure the appearance of materials are acceptable I have included a condition which requires that samples are provided which I believe deals with this point satisfactorily. Furthermore, the proposal includes a pitched roof building with pitched roof dormer windows. I believe this to be an acceptable design approach and combining this with the relatively well screened location of the site I am of the view that the impact upon visual amenities would not be unacceptable.

### Residential Amenity

- 9.04 Due to the refusal of the previous application and the Inspectors conclusions I am of the opinion that the impact upon residential amenities is the key consideration in this application. The application submitted under SW/10/1176 proposed a bungalow which was considered acceptable in this regard and also a 2 ½ storey building with an eaves height of 5.2m and a ridge height of 8.6m. The application as now submitted proposes a 1 ½ storey building with an eaves height of 2.7m and 7.9m to

the ridge. Due to the low eaves height of the building and the resultant pitched roof the consequence in my view is a structure which has considerably less impact upon the surrounding residential properties.

- 9.05 In addition to the above I note that the properties to the rear in Ufton Lane are a minimum of 22.5m away from the rear elevation of the proposal. The Council would normally expect a minimum rear to rear distance of 21m and therefore this proposal would achieve in excess of this. However, as the rear facing rooflights serve bathrooms and study / stores I am of the view that it would not seriously harm the living conditions of the future occupants of the dwellings if these windows were obscure glazed. As such, even though this is not indicated on the drawings I have included a condition which requires the rear facing windows to be obscure glazed. Therefore, I take the view that the issue of overlooking of properties in Ufton Lane has been acceptably overcome in this scheme.
- 9.06 The proposed properties have first floor windows in the front roofslope serving habitable rooms so the 21m rule will again be applied between the dwellings proposed and the properties in Rock Road. The closest relationship is between the proposed property in the north of the site and No.89 Rock Road which achieves a distance of 23m. The distance between the remaining three properties and the dwellings in Rock Road exceeds 23m and as such I take the view that the proposal would not cause unacceptable overlooking of these properties.
- 9.07 I also note the comments received from the owner and occupier of No.45 regarding the impact upon the rear garden of this property. The flank wall of the southern most dwelling in the proposed terrace will be 11m from the rear elevation of No.45 Epps Road. In my view this is a sufficient distance as to not have an unacceptably overbearing impact. Furthermore, the proposal will be to the north of No.45 and as such the scheme will not lead to a significant loss of sunlight received either to the rear garden or the rear windows of this property.
- 9.08 In overall terms I consider that the issue of the building having an overbearing appearance has been addressed by the reduction in height and the change in design which now includes a limited eaves height. The result of this is that the roof slopes away from the neighbouring properties in Ufton Lane and Rock Road creating in my opinion a building which sits comfortably within the site. Furthermore, although the proposal achieves in excess of the minimum overlooking distances required I have also recommended a condition requiring the rear facing windows at first floor level to be obscure glazed. Due to this the issue of overlooking of properties in Ufton Lane - the key reason for the Inspector dismissing the appeal has in my view been overcome. I consider that on the whole the proposal, due to the assessment undertaken above, will not impact unacceptably upon residential amenities. However, to ensure this I have also included a condition which removing permitted development rights so that the Council can have control over any future additions to the properties.

### **Parking and Access**

- 9.09 Local concerns have been raised regarding the parking provision and access to the site. A scheme of this size is below the threshold which Kent Highways and Transportation will provide comments on. However, the parking provision provided in this scheme of 1 car per unit complies with Kent Highway Standards. Furthermore, it is the Council's policy not to provide resident's permits to occupiers of new dwellings in resident parking areas. Finally, it is noted that for the previous scheme which proposed 6 units, the Inspector considered the application to be acceptable in

respect of highway matters and parking provision. As this application now proposes fewer units I am of the firm view that the application is acceptable in terms of access arrangements and parking provision.

### **Landscaping**

- 9.10 The submitted details state that each property will have the following planting: 6 x Angelica; 3 x Pieris flaming star; 5 x Yucca and 3 x Dogwood. A section of the rear private amenity space will be paved with Marshalls Saxon buffs and the front paving will consist of Marshalls red brick pavers. To ensure the hard and soft landscaping is acceptable I have imposed a condition requiring details to be submitted, as the species to be planted as set out above are not predominantly native.

### **Contamination**

- 9.11 A Phase 1 Contamination Assessment has been submitted with the application which concludes that a Phase II intrusive investigation is necessary on the site. The site also lies within a Source Protection Zone. I have consulted with the Council's Environmental Protection Manager and the Environment Agency. In order to ensure that the issue of contaminated land is properly dealt with conditions relating to land contamination have been recommended. I have included these and as such consider that the contamination and the protection of the public water source have been adequately dealt with.

### **Other Matters**

- 9.12 The majority of the grounds for objection have been dealt with above. I also note that the issue of property prices has been raised but as this is not a material planning consideration I make no further comment. In relation to additional traffic movements being created by the development I take the view that in this residential location, close to the town centre, an additional 4 dwellings would not create such a significant number of traffic movements as to be unacceptable. With regards to drainage, the site is currently made up of hardstanding. However, I have consulted with Southern Water and the Environment Agency (due to, amongst other things the sites location within a Source Protection Zone) and they raise no objection subject to the inclusion of conditions. As such I consider this matter to be dealt with. Concern has also been raised regarding refuse bins being taken to the end of the alley. This would be a maximum distance of 40m away from the northern most proposed dwelling and therefore I do not believe that requiring this to take place once a week is unreasonable. Finally, with regards to rear access from a gate of a neighbouring dwelling, this is a private matter between land owners and therefore I make no further comment.
- 9.13 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments fewer than 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

## **10.0 CONCLUSION**

- 10.01 Overall I take the view that the proposal has been altered in such a way from the scheme refused under SW/10/1176 (and dismissed at Appeal) to now make it acceptable in planning terms. The reduction in scale of the building, its significantly

lower eaves height and condition requiring obscure glazing of the rear windows creates in my view a scheme which sits comfortably within the site without having an overbearing impact upon neighbouring dwellings or private amenity space and which would not cause a serious loss of privacy or lead to unacceptable overlooking. Adequate parking provision has been provided and the proposed properties all have adequate and usable private amenity space. I recommend that planning permission be granted.

**11.0 RECOMMENDATION – GRANT** Subject to the following conditions

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

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 permitted shall take place in accordance with the following drawings: 15/2613/2A; 15/2613/1D and 15/2613/E.

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 and to ensure that such matters are agreed before work is commenced.

- 5) Notwithstanding the submitted details, no development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity, ), 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 and encouraging wildlife and biodiversity, and to ensure that such matters are agreed before work is commenced.

- 6) 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.

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

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

- 8) The area shown on the submitted plan as vehicle parking and turning space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

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

- 9) 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.

- 10) Upon completion, no further development, whether permitted by Classes A, B, C, D and E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

Reason: In the interests of the amenities of the area given the restricted nature of the site and its surroundings.

- 11) Notwithstanding the provisions of Class A, Part 2, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting that Order, no fences, gates walls or other means of enclosure shall be erected within the application site without the prior written approval of the Local Planning Authority.

Reasons: In the interests of visual amenity.

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

Reasons: In the interests of highway safety and convenience.

- 13) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the

site shall have been submitted to and approved, in writing, by the local planning authority:

- 1) A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean; Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

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

- 14) No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reasons: To prevent pollution of controlled waters

- 15) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reasons: To prevent pollution of controlled waters.

- 16) No infiltration of surface water drainage into the ground at this site is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reasons: To prevent pollution of controlled waters.

- 17) No dwelling shall be occupied until space has been laid out within the site in accordance with the submitted details for cycles to be securely sheltered and stored.

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

- 18) 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.

Reasons: To ensure that foul and surface water is adequately disposed of.

- 19) Notwithstanding the details shown on the submitted drawings, before the development is occupied the rear facing rooflights serving the bathrooms and study / store shall be obscure glazed and shall subsequently be maintained as such.

Reasons: To protect the privacy of the occupants of Ufton Lane.

### **Informatives**

- 1) Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:
- Duty of Care Regulations 1991
  - Hazardous Waste (England and Wales) Regulations 2005
  - Environmental Permitting (England and Wales) Regulations 2010
  - The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer. Refer to our website at <https://www.gov.uk/government/organisations/environment-agency> for more information.

- 2) The discharge of treated sewage to ground may require an Environmental Permit under the Environmental Permitting Regulations 2010 (EPR 2010) from the Environment Agency. You can find more information online at <https://www.gov.uk/permits-you-need-for-septic-tanks/permits> or contact us on 03708 506506 for an application form and guidance. You should be aware that the permit may not be granted. A permit will only be granted where the risk to the environment is acceptable.
- 3) All precautions must be taken to avoid discharges and spills to the ground both during and after construction. For advice on pollution prevention, the applicant should refer to our guidance "PPG1 – General guide to prevention of pollution", which can be found at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/29012](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/29012)



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- 4) 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, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire S021 2SW (Tel: 0330 3030119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).

### **Habitats Regulations Assessment**

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 3.8km south of The Swale Special Protection Area (SPA) and Ramsar site and 5km south of Medway Estuary and Marshes Special Protection Area and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions regarding the likelihood of significant effects; financial contributions should be made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG); the strategic mitigation will need to be in place before the dwellings are occupied.

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

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

development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.

- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion as this is for a small scheme of 4 dwellings, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

### **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.

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**REPORT SUMMARY**

<b>REFERENCE NO - 15/507246/FULL</b>			
<b>APPLICATION PROPOSAL</b> Construction of 2 bed bungalow with carport in the rear garden			
<b>ADDRESS</b> 320 Minster Road Minster-on-sea Kent ME12 3NR			
<b>RECOMMENDATION</b> Approve, subject to comments from Natural England			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The site is within the built up area boundary where the principle of residential development is accepted and would in my view not give rise to serious concerns regarding visual or residential amenities or cause unacceptable harm to the streetscene.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN COUNCIL</b> Minster On Sea	<b>APPLICANT</b> Mrs A Hughes <b>AGENT</b> Deva Design	
<b>DECISION DUE DATE</b> 29/10/15	<b>PUBLICITY EXPIRY DATE</b> 4/4/2016		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/00/0839	Two storey side extension to existing house (not implemented)	Approved	09.10.2000

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is located on the northern side of Minster Road, within the built up area of Minster-on-Sea. The site contains an existing semi-detached two-storey dwelling towards the southern end of the site. There is an existing garden to the rear of the property. The property has a landscaped garden to the front and a paved driveway to the side.
- 1.02 The site is surrounded by residential plots. The adjoining property, No.318 is a property of similar design to that on the application site and the property to the east, No.320A is a detached bungalow. The properties immediately to the rear of the application site in Saxon Avenue are bungalows.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the construction of a detached, 2-bedroom bungalow and a carport in the rear garden of the application site, known as 320 Minster Road.
- 2.02 The bungalow will measure 9.7m in width and 12m in depth. It will measure 2.7m to the eaves and 5.5m in overall height. The bungalow will have a pitched roof. A two bay carport is also proposed measuring 5.5m x 6.5m, 2.5m to the eaves and 3.6m in

overall height with a pitched roof. Rear private amenity space, 72 sqm in size is also proposed.

- 2.03 The bungalow's external walls are proposed to be rendered and painted white, with a dark grey slated roof. Clay ridge and hip tiles are proposed to be red in colour.
- 2.04 Internally, the bungalow will be comprised of two bedrooms, kitchen, lounge / diner, bathroom and en suite.
- 2.05 A new boundary is proposed to be established between the existing and proposed dwelling. An extended area of hard standing between the dwellings is to incorporate a driveway and the car port will provide two parking spaces. The car port is to be erected from oak framing, with plain brown concrete roof tiling. It is proposed that a timber framed fence (panels and posts) be erected along all boundaries.
- 2.06 The agent has submitted a supporting statement with the application which sets out the need for the bungalow. The need relates to the applicant's (and owners of No.320 Minster Road) daughter having a medical condition which requires constant care from her parents. As such, the proposed bungalow would be occupied by the applicant's husband and disabled daughter to reside in whilst the existing property (No.320) would be occupied by other family members. This will allow for family members to be on hand to help with caring when the parents take respite.
- 2.07 The existing dwelling at No.320 Minster Road would retain space to park 2 vehicles and private amenity space of approximately 75 sqm and additional amenity space to the side and front.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 None

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

#### The National Planning Policy Framework (NPPF)

- 4.01 The NPPF and the National Planning Policy Guidance (NPPG) both advocate provision of new residential development within sustainable urban locations close to local shops and services, subject to good design and no serious amenity issues being raised.

#### Development Plan

- 4.02 Policy E1 sets out standards applicable to all development, saying that it should be well sited and appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms;
- 4.03 Policy E19 states that the Borough Council expects development to be of high quality design and should amongst other requirements provide development that is appropriate to its context in respect of scale, height and massing, both in relation to its surroundings, and its individual details;
- 4.04 Policy H2 states that planning permission for new residential development will be granted for sites within the defined built up areas, in accordance with the other policies of the Local Plan.

- 4.05 Policy T3 states that the Borough Council will only permit development if appropriate vehicle parking is provided in accordance with Kent County Council parking standards.

## 5.0 LOCAL REPRESENTATIONS

- 5.01 Surrounding properties were sent a consultation letter. One response was received raising the following summarised objections:

- The proposal will create a terracing effect, out of keeping with the surrounding area;
- The proposed dwelling is over twice the size of the existing dwelling (No.320), is out of proportion with existing properties and unsympathetic to the surroundings;
- Density is already too high because of previous infill development;
- Inadequate parking provision for both properties and restricted access for emergency vehicles;
- Loss of several well established trees;
- Concern that this would set a precedent;
- Loss of amenity space for existing property.

## 6.0 CONSULTATIONS

- 6.01 Minster Parish Council objects to the application on the grounds that *'this is over intensive development of the site.'*

- 6.02 KCC Highways and Transportation state that *"the proposed development is taking access from an existing access point, and although there may be some additional vehicle movements at this access, these would be minimal and unlikely to have a material impact on the surrounding highways.*

*The parking provision of 4 spaces is in line with the minimum standards set out by IGN3, parking standards for residential developments.*

*Consequently, I can confirm that provided the following requirements are secured by condition or planning obligation, then I would raise no objection on behalf of the local highway authority:-*

- *Use of a bound surface for the first 5 metres of the access from the edge of the highway.*
- *Provision and permanent retention of the vehicle parking spaces and/or garages shown on the submitted plans prior to the use of the site commencing."*

I note that the existing driveway which will be continued to create the new access is already in situ and is made up of a bound surface in excess of 5m from the edge of the highway. As such I have not included this condition.

- 6.03 The Council's Environmental Protection Manager recommends an hours of construction condition.

6.04 I have consulted verbally with the Council's Tree Consultant who does not believe that the trees on the site to be of a sufficient quality or amenity value to be formally protected. No objection is raised to their loss.

6.05 Southern Water responded stating the following:

- *"No development or new tree planting should be located within 3 metres either side of the centreline of the surface water sewer;*
- *No new soakaways should be located 5 metres of a public sewer;*
- *All existing infrastructure should be protected during the course of construction works"*

An informative regarding connection to the public sewerage system has been recommended and I have included this.

## **7.0 BACKGROUND PAPERS AND PLANS**

7.01 Application papers and correspondence relating to application reference 15/507246/FULL.

## **8.0 APPRAISAL**

In my view the key considerations in the determination of this application are as follows:

- Principle of development;
- Impact upon residential amenities;
- Impact upon visual amenities and the streetscene;
- Impact upon SPA and RAMSAR site.

### **Principle of Development**

8.01 The application site lies within the built up area boundary where the erection of new dwellings is acceptable in principle in accordance with both locally and nationally adopted policies. As such I consider that the principle of residential development is established in this case.

### **Residential Amenities**

8.02 The proposed bungalow will be located 16.3m from the main rear elevation of No.320 Minster Road. This existing property also has a small single storey rear element. The proposed dwelling would also be 16.4m away from the two storey dwelling at No.318 Minster Road and 8.5m away from the bungalow at No.320A. To the rear the proposed property would be 21m away from No.23 Saxon Avenue. The bungalow proposed is limited to 5.5m in height and as such due to its limited height I do not consider it would have an overbearing impact upon the surrounding properties. The proposed car port would be 3.5m away from the single storey element of No.320 and 7.3m away from the main rear elevation, however the carport is limited to 3.6m in height with a pitched roof sloping away from the closest property. As such I also consider that the proposed car port would not have an unacceptable impact upon neighbouring amenities.



- 8.03 Due to the proposed siting of the bungalow I have paid particular attention to the internal layout of the proposed dwelling and especially the location of the windows serving habitable rooms. The main windows serving bedroom 1 and the lounge / diner have been located on the rear of the bungalow facing the private amenity space. The properties to the rear of the application site are bungalows and as such I do not consider that there would be the possibility of mutual overlooking as views would be obscured by the boundary fence. Furthermore, views towards the private amenity space would be blocked by the bungalow itself from the closest existing properties in Minster Road and as stated above, by the boundary fence from the properties in Saxon Avenue.
- 8.04 The window serving bedroom two would be located within the front elevation but views towards it from the first floor windows of No.s 320 and 318 Minster Road would be blocked by the location of the proposed car port. Condition 9 below requires the provision of the car port prior to the occupation of the dwelling, which adequately addresses this matter. There is a further window on the front elevation but as this does not serve a habitable room I do not consider this to be unacceptable. There are windows proposed on both side elevations but those on the west facing flank wall serve an en suite and a bathroom which would be expected to be obscure glazed. To ensure this I have included a relevant condition to this effect. On the opposite elevation there are also two windows proposed, a secondary window serving the kitchen and a further window serving the lounge / dining room. As the neighbouring property on this side is a bungalow I am of the opinion that any views would be blocked by the side boundary fence. As such, I consider that the private amenity space and the layout of the bungalow has been considered in such a way as to avoid mutual overlooking
- 8.05 Although the access to the dwelling will be provided between No. 320 and 320A Minster Road, as there is only one dwelling proposed I do not consider that the vehicle movements would be significant in frequency. Therefore I do not believe that this would have an unacceptable impact upon the amenities of these two adjacent dwellings.
- 8.06 In my opinion the proposal as a whole provides adequately sized accommodation for the future occupants of the dwelling, an acceptably sized garden, suitable parking and turning space and sufficient space for the storage of bins and cycles. The bungalow is limited to a height of 5.5m with a roof design to limit any overbearing impact upon neighbouring dwellings. However, in order that any additional development on the site can be properly assessed I have imposed a condition which removes permitted development rights. In my view this is a satisfactory way in which to ensure that the site size remains acceptable.

#### **Visual Amenities and the Streetscene**

- 8.07 The properties within close proximity of the application site are mixed in style and design and consist of two storey detached, two storey semi detached and detached bungalows. As such, I do not consider that an additional bungalow, in design terms, would be out of keeping with similar developments within the vicinity. Furthermore the proposed bungalow will be simply designed with a pitched roof. The materials comprising of rendered and painted walls and roof tiles would in my view be acceptable.
- 8.08 The existing streetscene within this part of Minster Road is characterised by properties which enjoy, for a built up residential area, relatively generous frontages. Although the bungalow proposed would not be situated close to the highway I note

that the gap between No.320 and No.320A is limited to approximately 9m. Due to the location of the bungalow and its limited height I am of the opinion that public views towards the dwelling would be limited to the gap between these two existing properties and even then a large proportion of the bungalow would be hidden by the existing dwelling at No.320. Furthermore, I note that the angle of the pitched roof would broadly follow the line of the roof of the existing dwelling at No.320 which limits the impact it would have. Therefore, although the proposal would not be entirely in keeping with the existing pattern of development and would comprise backland development I believe that the proposal would not give rise to significant harm to the streetscene as it would be largely hidden from public vantage points.

### **Impact Upon SPA and Ramsar Sites**

- 8.09 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments under 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

### **Other Matters**

- 8.10 One letter of objection from a neighbouring occupier has been received and I respond as follows. Firstly, a gap of 3.8m between the proposed bungalow and the bungalow at No.320A Minster will be retained. Therefore I do not consider that a terracing effect would be created. I have addressed the issue of the impact upon the streetscene in my assessment above which requires no further elaboration. KCC Highways and Transportation have been consulted and they found both the proposed and existing dwelling at No.320 would have adequate parking provision. In regards to the point made about the loss of trees, the trees on the site are not subject to a Tree Preservation Order and as such the Council would not have any control over their loss if the site owner was to remove them. I also consider due to the location of the trees within the rear garden, with limited views towards them from public vantage points that their loss would not impact unacceptably upon public amenities. Furthermore, as set out above the Council's Tree Consultant does not believe that the loss of the trees would be unacceptable. As such, I do not consider that the loss of these trees to substantiate a reason for refusal.
- 8.11 In relation to this application setting a precedent I take the view that if further applications were to come forward for similar types of developments then they would be judged on their merits, as this case has been. Finally, the existing property at No.320 will have its amenity space reduced by virtue of this development. However, the rear garden will still measure 7.3m in depth and 9.2m in width. I also note that there is further amenity space to the side and front of No.320. On this basis I take the view that the remaining amenity space is acceptable.

## **9.0 CONCLUSION**

- 9.01 Overall I believe that the bungalow has been appropriately designed and laid out in order to limit the impact it would have upon neighbouring amenities. I am also of the opinion that the main windows to the habitable rooms have been located in such a location that these rooms and the private amenity space would not be unacceptably overlooked by the surrounding properties. The established nature of the streetscene would in my view not be unacceptably harmed and the impact upon SPA and Ramsar sites and parking have been adequately dealt with. I consider that the site is

large enough to be able to accommodate a dwelling of this scale with adequate amenity and parking space whilst also retaining adequate space and parking provision for the occupiers of the dwelling at No.320. Whilst I note the personal circumstances of the applicants and the need for the dwelling, regardless of this I am of the opinion that the proposal is acceptable in its own right. I recommend that planning permission 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 permitted shall take place in accordance with the following drawings: DC/127 (received 11/01/2016) and DC/073 (received 03/02/2016).

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 and to ensure that such matters are agreed before work is commenced.

- 5) No development shall take place until full details of both hard and soft landscape works, have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity, ), 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 and encouraging wildlife and biodiversity, and to ensure that such matters are agreed before work is commenced.

- 6) 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.

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

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

- 8) The area shown on the submitted plan as vehicle parking and turning space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

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

- 9) The carport hereby approved shall be provided prior to the occupation of the dwelling hereby approved, and shall be kept available for the parking of vehicles and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land or in such a position as to preclude vehicular access thereto.

Reasons: In the interests of residential amenity, and as development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users and in a manner detrimental to highway safety and amenity

- 10) 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.

- 11) Upon completion, no further development, whether permitted by Classes A, B, C, D and E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

Reason: In the interests of the amenities of the area given the restricted nature of the site and its surroundings.

- 12) The access details shown on the approved plans shall be completed prior to the first occupation of any dwellings hereby approved, and the access shall thereafter be maintained in perpetuity.

Reason: In the interests of highway safety and amenity.

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

Reasons: In the interests of highway safety and convenience.

- 14) Before the dwelling hereby permitted is occupied, the proposed windows in the west elevation serving the en-suite and bathroom shall be obscure glazed and shall subsequently be maintained as such unless otherwise agreed in writing by the Local Planning Authority.

Reasons: To protect the privacy of the future occupants of the dwelling.

### **Informative**

A formal application for connection to the public sewerage system is required in order to service this development, Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)

### **Habitats Regulations Assessment**

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 5.8km north of The Swale Special Protection Area (SPA) and Ramsar site and 4.3km east of Medway Estuary and Marshes Special Protection Area and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
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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.

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<b>REFERENCE NO - 15/510273/FULL</b>		
<b>APPLICATION PROPOSAL</b> Replace existing barn with 2 holiday lets and new barn		
<b>ADDRESS</b> Parsonage Farm Kennelling Road Stalisfield Kent ME13 0JQ		
<b>RECOMMENDATION</b> Approve		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> <ul style="list-style-type: none"> <li>- The removal of the Atcost style Barn and erection of smaller traditional barn would enhance the surrounding area and setting of the listed building.</li> <li>- The construction of the small holiday lets in a traditional courtyard design would enhance tourism opportunities and would preserve the setting of the listed building.</li> </ul>		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection		
<b>WARD</b> East Downs Ward	<b>PARISH/TOWN COUNCIL</b> Stalisfield	<b>APPLICANT</b> Mr Paul Goddard <b>AGENT</b> Anthony Swaine Architecture Ltd
<b>DECISION DUE DATE</b> 14/04/16	<b>PUBLICITY EXPIRY DATE</b> 08/02/16	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>		
SW/07/0209 – Two storey extension, internal & external alterations. Porch to front elevation – Approved		
SW/07/0208 – Construction of two storey extension, side extension and porch. Construction of detached garage – Approved		
SW/06/1252 – Listed Building Consent for conversion to annexe/holiday accommodation and associated internal and external alterations – Approved		
SW/06/1150 – Change of use to annexe/holiday accommodation and associated conversion works – Approved		

**1.0 DESCRIPTION OF SITE**

- 1.01 Parsonage Farm is located in the open countryside on Kennelling Road with views over the Kent Downs Area of Outstanding Natural Beauty. The farmhouse itself is a Grade II Listed property.
- 1.02 There is currently a large Atcost type barn measuring 21m x 15m in size and dates from around the 1960's. A cart-lodge in the property was granted planning permission in 2006 to be converted for use as an annexe.

**2.0 PROPOSAL**

- 2.01 The proposal is to demolish the large, unattractive Atcost style barn and to replace it with two holiday lets and a new, smaller more traditional barn. The holiday lets would be single storey with two bedrooms and would form a courtyard with the new barn and the existing cart-lodge.

### **3.0 PLANNING CONSTRAINTS**

Area of Outstanding Natural Beauty KENT DOWNS

Area of Outstanding Natural Beauty Maidstone AONB directive

Listed Buildings MBC and SBC Ref Number: 20/SW

Description: G II PARSONAGE FARM, HILLSIDE ROAD, STALISFIELD, FAVERSHAM,

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

#### **Swale Borough Local Plan 2008**

- 4.01 Saved Policies E1 (General Development Criteria), E6 (Countryside), E9 (Protecting the Quality and Character of the Borough's Landscape), E14 (Proposals affecting Listed Buildings), E19 (Achieving High Quality Design and Distinctiveness), B5 (Existing and New Tourist Attractions and Facilities).

### **5.0 LOCAL REPRESENTATIONS**

- 5.01 A site notice was put up and consultation letters sent to neighbours, however no responses were received.

### **6.0 CONSULTATIONS**

- 6.01 Stalisfield Parish Council objects to the application. They have concerns about the size of the application particularly in relation to the size and beauty of the existing farmhouse. If a smaller application had been made they may have been more amenable to the proposal.
- 6.02 KCC Ecology were consulted on the application, they stated that the new buildings should incorporate bird nesting and bat roosting opportunities. And that the demolition of the barn be outside of the breeding bird season. If that is not possible an ecologist must examine the site prior to any work commencing.

### **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers for 15/510273/FULL

### **8.0 APPRAISAL**

- 8.01 The most important consideration in this application is the effect the development would have on the setting of the listed building and the Kent Downs AONB. The current large, Atcost barn is dominant in its appearance on the site and is surplus to requirements for the applicants. They do however, still need a small barn and this is to be incorporated in the courtyard design of the holiday let cottages. The removal of the Atcost barn will be a significant improvement to the setting of the house and introduction of a U-shaped building group that includes a traditional but smaller barn along with two holiday cottages is an acceptable development.

- 8.02 There is some evidence that a courtyard did once exist on this site where the applicants are proposing the new development. The design of the holiday lets and barn takes on a traditional design in keeping with the listed farmhouse. The materials used in their construction would be flint, red brick and dark stained featheredge weatherboarding, plain clay tiles for the roof and timber doors and windows. The barn would also have the same materials with large timber barn doors. Policy E9 states *“The quality, character and amenity value of the wider landscape of the Borough will be protected and where possible enhanced”*. Policy E14 also states *“Proposals affecting a Listed Building, and/or its setting, will only be permitted if the buildings special architectural or historic interests, and its setting, are preserved”*. Both of these policies require the setting of the listed building and surrounding area to be preserved or enhanced, the removal of the large out of character barn and replacement with a smaller more traditional style and two small holiday cottages would indeed enhance the setting of both the listed building and the AONB.
- 8.03 A substantial design and heritage statement was provided with the application a number of key points are listed below:
- *“Planning Consultant sourced historic maps of that farm that indicated the historic form of the farmyard to the north and west of the converted cart-lodge as a U-shaped development as evidenced by the remains of flint walls to the north of the cart-lodge”*.
  - *“The proposed development is constructed of a mixture of field flint with red brick quoins and dressing at openings with sections of dark stained featheredge weather-boarding and cart openings or smaller openings with shutters in order to give the appearance of a simple set of traditional agricultural buildings”*.
  - *“The existing track currently serving the barn will be extended to the front of the proposed barn, providing access for farm machinery, specifically a tractor and storage for smaller farm equipment. Parking for the holiday lets will be provided on the existing ample driveway. The external space for the holiday lets will be confined to the courtyard”*.
  - *“The development will be set out so that the floor levels throughout the holiday lets will be fully accessible and will allow easy going wheelchair access from the proposed car parking area”*.
  - *“A fundamental decision was taken to design the proposals with traditional forms and materials so that the development would fit into the existing fabric of the farmstead and compliment the character of the historic farmhouse, rather than to propose more modern designs”*.
- 8.04 The Council is keen to promote new tourist facilities in accordance with policy B5 of the local plan that states *“The Borough Council will permit improvements to existing tourist facilities and the development of new tourist attractions and facilities, including serviced and self-catering accommodation in accordance with the Local Plan”*. As previously stated the two new holiday cottages and barn would preserve and

enhance the surroundings and would be in accordance with the policies set out within the Swale Borough Local Plan 2008.

## 9.0 CONCLUSION

9.01 In my opinion the proposals are in accordance with the relevant saved policies within the Swale Borough Local Plan 2008 and the removal of the existing barn and replacement with two holiday cottages plus a small barn, will enhance the setting of the listed building and will preserve the surroundings of the Kent Downs AONB.

**10.0 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) 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 and to ensure that these details are approved before development commences.

(3) Detailed drawings at a suggested scale of 1:5 of all new external and internal joinery work and fittings together with sections through glazing bars, frames and mouldings shall be submitted to and approved by the Local Planning Authority before any development takes place. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the surrounding area and to ensure that these details are approved before development commences.

(4) No development shall take place until constructional details at a suggested scale of 1:5 of the eaves and ridges has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the surrounding area and to ensure that these details are approved before development commences.

(5) The new development should incorporate bird nesting and bat roosting opportunities and the existing barn is to be demolished outside of the breeding bird season unless an ecologist has examined the site prior to development.

Reason: in order to safeguard protected species that may be present within or adjacent to the building.

- (6) The holiday let accommodation hereby permitted shall be used solely for the purpose of holiday accommodation and shall not be let or occupied by any person or group of persons for more than four weeks in any calendar year.

Reason: In order to prevent the permanent residential use of the buildings and having regard to the rural location of the site.

- (7) Upon completion of the development hereby permitted, no extensions or external alterations to the holiday accommodation hereby permitted, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or not, shall be carried out.

Reason: In the interest of visual and local 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.

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**REPORT SUMMARY**

<b>REFERENCE NO - 15/507804/FULL</b>			
<b>APPLICATION PROPOSAL</b> Removal of existing builders yard and construction of 11 new dwellings including access road, garaging and car ports, and as amended by drawings received 2 <sup>nd</sup> December 2015.			
<b>ADDRESS</b> Land At Woodgate Lane Maidstone Road Borden Kent ME9 7QB			
<b>RECOMMENDATION –</b> Approve subject to delegation to Officers to enter into Section 106 Agreement			
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> Application considered to be in accordance with policy, noting the Council’s lack of a five year housing land supply, and the location being considered to be sustainable as required by the NPPF.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Members’ authority is sought to enter into Section 106 Agreement for the provision of appropriate contributions towards library book stock, play equipment, waste and household bins, SPA mitigation fee and monitoring fee.			
<b>WARD</b> Borden & Grove Ward	<b>PARISH/TOWN COUNCIL</b> Borden	<b>APPLICANT</b> Mr Matthew Stevens <b>AGENT</b> Country House Developments Ltd	
<b>DECISION DUE DATE</b> 12/01/16	<b>PUBLICITY EXPIRY DATE</b> 20/11/15	<b>OFFICER SITE VISIT DATE</b> Three separate site visits	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/501370/FULL	Re-development of existing builders yard and open storage area with a mixed use scheme providing 1 Convenience store, 7 Affordable homes and 14 open market homes	Refused	11 <sup>th</sup> June 2016
<i>Summarise Reasons:</i> Parking and design issues			

**MAIN REPORT**

**1.0 INTRODUCTION**

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

**2.0 DESCRIPTION OF SITE**

2.01 The site is a vacant plot of land which is attached to the adjacent builders’ merchant yard. It is at present somewhat overgrown and does not present a pleasing visual

aspect. It is situated on the corner of Maidstone Road and Woodgate Lane. Maidstone Road is a single carriageway highway, now a fairly quiet road due to the construction of the dual carriageway route approximately two hundred metres to the west. Woodgate Lane is an unmade and unadopted road. The site slopes up gradually from Maidstone Road.

2.02 The site is situated outside the built-up area boundaries, as set out in the Local Plan, and is therefore in the countryside in planning terms. However, similar residential development has been approved along Maidstone Road in the vicinity of the site. There are no other planning constraints on this site.

2.03 A previous application for one convenience store, seven affordable homes and fourteen market houses was refused last year under reference 15/501370/FULL. The reasons for refusal read as follows:

*‘The proposal does not represent sustainable development. By virtue of its isolated location outside any well-defined urban boundary, the lack of the prospect of residents being able to integrate with the existing communities, the lack of almost any community infrastructure or open space, and the limited public transport to service the site which will result in a car dependent population. Furthermore the development will appear at odds with its surroundings, introducing an essentially urban form of development into this isolated location in a way which will detract from the intrinsic character of the countryside. Yet it still appears unlikely to provide car parking sufficient or suitable for the needs of future residents. This harm both significantly and demonstrably outweighs any benefits from the proposal (including its contribution to the overall supply of housing in the Borough and to the provision of affordable dwellings). Development is therefore contrary to relevant parts of policies SP1, TG1, E1, E6, E9, E19, C2 and C3 of the Swale Borough Local Plan 2008; and to policies ST5, CP4 and DM14 of Bearing Fruits 2031, the Swale Borough Local Plan - Publication version. Development would be contrary to paragraphs 7, 12, 14, 17, 49, 55, 64 and 110 of the National Planning Policy Framework.’*

### 3.0 PROPOSAL

3.01 The proposal is for eleven new houses, with associated amenity space and parking. The layout has been designed so that four houses front onto Maidstone Road, whilst the remaining seven would be grouped around a courtyard style access. Similarly, the four houses to the front are of a semi-rural house design, whilst the other seven are loosely based on an agricultural building genre of design.

3.02 Parking provision would include open spaces and garaging. Each house would also have an associated private amenity space, and all public areas would be landscaped.

### SUMMARY INFORMATION

	<b>Existing</b> <i>[Delete if not a replacement]</i>	<b>Proposed</b>	<b>Change (+/-)</b> <i>[Delete if not a replacement]</i>
Site Area	0.047h	0.047h	-
Car parking spaces (inc. disabled)	N/A	25	+25
No. of storeys	N/A	2	+2
Max height	N/A	Varies	-
Max eaves height	N/A	Varies	-
No. of residential units	None	11	+11



## 4.0 POLICY AND OTHER CONSIDERATIONS

### 4.01 National Planning Policy Framework (NPPF)

Paragraph 7 states that sustainable development should have:

- ***an economic role*** – *contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*
- ***a social role*** – *supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and*
- ***an environmental role*** – *contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.*

Paragraph 14 states the presumption in favour of sustainable development, and reads as follows: 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. For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;
  - or
  - specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;
  - or
  - specific policies in this Framework indicate development should be restricted.

Paragraph 17 states that development should incorporate the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value

Paragraphs 47 & 50 deal with the need to deliver a wide choice of high quality homes

Paragraph 49 states that *'Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.'*

Paragraph 55 promotes sustainable housing within the countryside, if that housing is of exceptional quality and of innovative design

#### 4.02 Swale Borough Local Plan 2008

Policy B1 supports the retention of existing employment land and businesses. Proposals involving a change of use are required to show by reference to this policy that a mixed use approach to the site involving a viable level of replacement or alternative employment provision is not appropriate. Policy B1(c) states that the use of existing employment land may be changed if it is tested by market testing to ascertain that there is insufficient demand to justify its retention for employment use.

Policy E6 sets a policy of rural restraint designed to protect the countryside for its own sake and discourages residential development in the countryside, although *'those developments necessary for maintaining and enhancing the landscape character, biodiversity, community, social and economic needs of the countryside will be considered appropriate.'*

Policy E9 protects the character of the landscape in the Borough, and states that development proposals within the countryside should be *'informed by and sympathetic to local landscape character and quality'* and *'remove features which detract from the character of the landscape'*

Policy E19 requires good design of development.

Policy H2 (Providing for new housing) states that *'in designing new residential development, the objective should be to create more sustainable forms of development'*.

Policies T1 and T3 require safe access to new development and adequate levels of parking provision.

#### 4.03 Bearing Fruits 2031: The Swale Borough Local Plan Part 1; Publication Version December 2014

Policy CP3 deals with delivering a wide choice of high quality homes and requires that development achieves *'sustainable and high quality design.'*

Policy CP4 further emphasises this by stating that all development proposals *'will be of a high quality design that is appropriate to its surroundings.'*

Policy DM7 requires adequate parking facilities for all new development

Policy DM9 refers to occasions when housing within the countryside should be allowed, including where *'the site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community.'*

Policy DM14 refers to general development criteria

Policies DM19 and 20 refer to the need for sustainable design and construction and the use of renewable and low carbon energy

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Borden Parish Council has declined to comment on the application.
- 5.02 One email of concern has been received from a local resident. The points raised therein can be summarised as follows:
- Concern over status of private road (Woodgate Lane) which is privately maintained. Worried that future access from Woodgate Lane to rear of plots 4, 5, 6 and 7 could be implemented.
  - Concern that this development will compromise access along Woodgate Lane; suggestion that a passing place should be created adjacent to Plot 7.

## **6.0 CONSULTATION RESPONSES**

- 6.01 KCC Highways and Transportation originally raised objection to the proposal on grounds of highway safety and amenity. Following a meeting between Officers, KCC Highways Officers and the architect, amended drawings were submitted taking into account all of the concerns expressed by our KCC Highways colleagues. As such, KCC Highways now raises no objection, subject to conditions included below.
- 6.02 The Environment Agency raises no objection, subject to conditions included below.
- 6.03 The Lower Medway Internal Drainage Board raises no objection.
- 6.04 The Environmental Services Manager raises no objection, subject to conditions included below.
- 6.05 UK Power Networks and Southern Gas Networks raise no objection.
- 6.06 The KCC Footpaths Officer raises no objection to the proposal, subject to no changes being made to the public footpath adjacent to the site.
- 6.07 The Swale Footpaths Group also raises no objection.

## **7.0 APPRAISAL**

- 7.01 The key issues which Officers need to address are those of the principle of development and residential amenity.
- 7.02 Principle of Development: Paragraph 49 of the NPPF refers to a situation where a five year housing supply target has not been met and Members will note the quote in the Policy section above. At the time of submission of the application, the Council has not met the Government set figures for housing supply, which left the Council open to speculative proposals for development on non-designated sites which would, if supported, count toward to the five year supply, and address requirements for quality and choice. Whilst this is a development for only eleven houses, therefore only making a small contribution towards target, this would still be a positive outcome. The Planning Inspector considering the Emerging Local Plan has since lessened this impact to some extent with her Interim Report, but the factor still has to be considered.

As noted above, the site is situated outside the established built-up area boundaries; as such, the proposal is clearly contrary to Policy E6 of the Swale Borough Local Plan 2008, which precludes residential development within the countryside. However, in this case, I would contend that an exception can be made. The previous application was partly refused on the grounds of being unsustainable; however, the new design, incorporating open space, and being designed not to be a separate entity from other existing development, is more likely to be part of the existing community. I also note that there is a half hourly bus service, stopping on Maidstone Road, linking the site to Sittingbourne, Faversham and Maidstone. As such, I consider the site to be sustainable.

The employment use of the site would not be lost; the site has been vacant for several years and has not been used in conjunction the adjacent builders' yard, which would still continue as a business to the rear of the site. As such, I am of the opinion that residential development here could be acceptable, and would accord with the requirements of Policy B1. The proposals would also be compliant with Policy E19, Achieving High Design Quality and Distinctiveness.

The site is 'brownfield', in that it is previously developed land. Both National and Local policy state that brownfield sites should be considered for development before greenfield sites.

The site's present poor visual appearance clearly detracts from the visual amenity of the surrounding countryside. I would contend that the well-designed houses proposed, with their careful use of landscaping, would present a visually far more acceptable aspect. Policy DM20 of 'Bearing Fruits' states that, 'Priority will be given to development on previously developed land', as is the case here.

I would further note that the proposed properties are situated away from existing properties, therefore not reducing the residential amenity of their occupiers, and also presenting a more pleasant visual aspect for neighbours than is seen at present.

As such, I am of the opinion that the principle of development is acceptable in this case.

### 7.03 Residential and visual amenity

As noted above, the site is not in a visually conducive state at the present time, and I am of the opinion that the proposal would be a welcome addition to this part of the street scene. The proposed houses are well designed and would utilise traditional vernacular materials. The use of a courtyard setting would further enhance the design of the properties, producing a high quality development of visually pleasing properties.

I have noted the concerns raised by the local resident. The concerns raised are based upon conjecture with regard to future rear access points to the proposed rear gardens of the plots noted. No accesses are shown on the submitted drawings, and as such, I cannot take conjecture into consideration. Similarly, as the proposed development will not affect Woodgate Lane itself, I do not believe that the proposal will create any traffic problems in this steep, rutted unmade road.

As such, I do not believe that the proposal, if approved, would have a harmful effect on either the visual amenity of the area or the residential amenity of surrounding residents. As noted above, the proposed properties would have little if any physical

impact upon either residential or visual amenity, due to their careful design and position not immediately adjacent to the boundaries of neighbouring properties.

#### 7.05 Developer Contributions:

- KCC Contributions Team has requested contributions of £672.22 towards library funding, but do not seek contributions for education provision.
- SBC's Waste Team requests a contribution of £1,050.00 to allow two bins (recycling and waste) for each house
- The Greenspaces Manager has requested contributions of £12,065.20 (£861.80 per dwelling) towards play equipment to be provided in Borden to meet the need arising from this scheme.
- Developer Contribution to mitigate impact on the nearby Special Protection Area would be £3122.00 (£223.00 per dwelling)
- SBC monitoring fee (5% of £16, 906.42) - £845.32
- Total = £17,751.74

#### 7.06 Summary

I therefore recommend that planning permission should be granted and that the Section 106 Agreement be delegated to Officers to enter into and agree. I also seek authority to agree triggers for the various payments and to amend the amounts of money as required.

**RECOMMENDATION** – Grant subject to the signing of a suitably worded Section 106 Agreement and 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 The development hereby approved shall be carried out in complete accordance with drawings: 501/CM/100; 501/CM/002; 501/CM/003 501/CM/004/A; 501/CM/005; 501/CM/006/A; 501/CM/007/A; 501/CM/008; 501/CM/009/A; 501/CM/010/A ; 501/CM/011/A; 501/CM/012; 501/CM/013; 501/CM/014/A; 501/CM/015; 501/CM/016; 501/CM/017; 501/CM/018; 501/CM/019; 501/CM/020; 501/CM/021; 501/CM/022; 501/CM/023, 501/CM/024; and 3706-DR-001.

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

3 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, and to ensure that the details are correct before any development takes place.

4 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.

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

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

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

Reason: To ensure any contaminated land is adequately dealt with and to ensure that such matters are agreed before work is commenced.

6 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.

7 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.

8 Before the development hereby permitted is commenced, a detailed sustainable surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall demonstrate that both the rate and volume of run-off leaving the site post-development will be restricted to that of the existing site during any rainfall event (up to and including the climate change adjusted 100yr critical storm).

Reasons: In the interests of sustainable drainage on the site, and to ensure that the details are correct before any development takes place.

9 No dwelling hereby permitted shall be occupied before details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- a timetable for its implementation, and
- a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reasons: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

10 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.

Reasons: To ensure that the principles of effective sewerage disposal are incorporated into this proposal and to ensure ongoing efficacy of the sewerage provisions.

11 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.

12 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.

13 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 and to ensure that the details are correct before any development takes place.

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

Reasons: In the interests of amenity and road safety.

15 During construction provision shall be made on the site to accommodate operatives' and construction vehicles loading, off-loading or turning on the site.

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

16 No development shall take place until full details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include means of enclosure, hard surfacing materials, and an implementation programme.

Reasons: In the interests of the visual amenities of the area, and to ensure that such matters are agreed before work is commenced.

17 Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and



species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reasons: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

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.

Reasons: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

19 The areas marked on the approved drawing no.P1411-P-101 as parking spaces, car ports and garages 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) (England) Order 2015 (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.

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

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

Reason: In the interests of highway safety.

21 Underground ducts shall be installed before any of the buildings hereby permitted are occupied to enable telephone services and electrical services to be connected to the dwellings within the application site without recourse to the erection of distribution poles and overhead lines, and notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, no distribution pole or overhead line shall be erected.

Reason: In the interests of visual amenity.

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; 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 acceptable, following the submission of new drawings received on 2<sup>nd</sup> December 2015.

## INFORMATIVES

INFORMATIVE 1: Planning permission does not convey any approval for construction of the required vehicular crossing, or any other works within the highway for which a statutory licence must be obtained. Applicants should contact Kent County Council - Highways and Transportation (web: [www.kent.gov.uk/roads\\_and\\_transport.aspx](http://www.kent.gov.uk/roads_and_transport.aspx) or telephone: 03000 418181) in order to obtain the necessary Application Pack.

## INFORMATIVE 2:

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.

**PLANNING COMMITTEE – 7 APRIL 2016**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>REFERENCE NO - 15/510499/FULL</b>		
<b>APPLICATION PROPOSAL</b> Permission is sought for change of use of land to a residential caravan site, for two Romani Gypsy families. The site to contain two static caravans, two touring caravans, parking for four vehicles with associated hardstanding, and septic tanks/water treatment plants as required. This application is part retrospective.		
<b>ADDRESS</b> The Retreat Faversham Road Newnham Kent ME13 0SP		
<b>RECOMMENDATION - Refuse</b>		
<b>WARD</b> East Downs Ward	<b>PARISH/TOWN COUNCIL</b> Ospringe	<b>APPLICANT</b> Mrs Annie Gibbs <b>AGENT</b>
<b>DECISION DUE DATE</b> 08/02/16	<b>PUBLICITY EXPIRY DATE</b> 30/03/16	

**1.0 DESCRIPTION OF SITE**

- 1.01 This application relates to a steeply sloping traditional orchard to the north of Newnham situated within an attractive dry valley within the Kent Downs Area of Outstanding Natural Beauty. The land has no prior planning history. The site is adjacent to Newnham Valley Road, but it is located in a remote location well away from any local services or amenities.
- 1.02 Access to the site is via a simple field gate situated within the junction between Elverland Lane and Newnham Valley Road, where emerging drivers cannot be seen by traffic turning left into Elverland Lane, and who cannot see approaching traffic due to a complete lack of visibility splays at the site entrance.
- 1.03 The site was occupied unlawfully by the applicant on the weekend of 12/13 December 2015 with two mobile homes and two touring caravans. This retrospective planning application was submitted on 14 December 2015. The Council served an Enforcement Notice on 24 December 2015. On the same day the Council also served a Stop Notice regarding hardsurfacing works on the site. The enforcement notice set a six month period for compliance, but an appeal has been lodged against this requirement, with the applicant seeking a three year period for compliance. A hearing date is yet to be set for this appeal.

**2.0 PROPOSAL**

- 2.01 The application proposes use of the site for the stationing of two mobile homes and two touring caravans for the applicant and her family, with hardstanding and septic tanks/water treatment plants as required. The occupants of the site are the applicant, her husband, her daughter, and her daughter's two children aged 7 years and about

one year old. I made relevant enquiries regarding personal circumstances when the applicant first occupied the site. The applicant has also submitted a number of documents and details regarding gypsy equality issues, her own family circumstances and her gypsy status to support the application, partly at my express request, and I summarise this information below.

#### Gypsy status

- 2.02 The applicant has sent details of her family's attendance at Horse Fairs, Fairs and Events throughout the year, as well as at other unspecified cultural and family events. The applicant explains that the family also continue to travel for work for a significant part of the year, and explains that her family have also stayed at different camps when working way on the roads. This she suggests satisfies the test of gypsy status.

#### Health issues

- 2.03 The applicant has also submitted an Education and Health Statement. This largely rehearses widely known issues about the health and educational issues affecting gypsies and travellers, but also sets out some details of the family members' health issues. These relate principally to the applicant's husband who has on-going health issues, and to her grandson (aged 7) who has learning and behavioural problems for which he is receiving specialist medical help. Letters from the grandson's school (which he started at in January 2016) and from the NHS to the school along with details of his referral to CAMHS (Child and Adolescent Mental Health Services) have been provided on a confidential basis. The applicant's daughter is also being prescribed medication.

#### Equality and Human Rights issues

- 2.04 A Design and Access Statement has been submitted some time after the application, although this is strictly speaking not a requirement for this application. Nevertheless, the statement suggests that;
- There would be little extra traffic from this small family site
  - The road is quiet with slow traffic speeds and low traffic flow
  - Visibility either side of the gate is "reasonably good". The site has good and safe access to primary and other roads
  - The applicant previously worked the orchard
  - Visual impact is minimal even though the site is within the AONB
  - Screening around the site can be improved with further planting
  - Two nearby private gypsy sites have temporary planning permissions
  - The site is not visible from nearby footpaths
  - A recent appeal decision at Badlesmere weighed personal circumstances above harm to the AONB
  - Mains water and electricity services can be provided to the site
  - Septic tanks or water treatment plants can be installed at the site
  - A bus service passes the site, which is just over 3 miles from Faversham
  - The site is affordable and will reduce the need for other sites
  - A lack of site supply should be a significant factor in granting a temporary permission
- [NOTE: This advice no longer applies in an AONB]**

- There is an undersupply of sites, possibly 9 or 10 sites, although it may be more
  - There are no flood risk issues on the site
- 2.05 A block plan showing the location of the mobile homes, touring caravans, parking areas, tarmac and planting has also been sent in more recently.
- 2.06 The statement notes that elsewhere, strongly compelling personal circumstances have carried significant weight along with identified need for sites and a lack of reasonable alternative sites. It also refers to the United Nations Convention on the Rights of the Child which requires that a child's best interests be a primary consideration, and to the European Convention on Human Rights that requires respect for family and private life.
- 2.07 The statement confirms that the applicant has gypsy status for planning purpose and would accept a personal and/or temporary planning permission as it is important that the family has a stable place to live and access education and healthcare. The Human Rights Act is referred to as is the entitlement of gypsies and travellers to their traditional way of life, which involves living in caravans. These issues are said to amount to "Very Special Circumstances" which are material to the planning application.
- 2.08 Finally, the applicant has submitted a number of documents relating more generally to the issue of racial discrimination especially in relation to gypsies both from the UK and the Council of Europe and UNHCR.

### **3.0 PLANNING CONSTRAINTS**

Area of Outstanding Natural Beauty KENT DOWNS

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

National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) (Re-issued)

- 4.01 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 with amendments. Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for Gypsy and Traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.
- 4.02 Whilst regard has been paid to all of the guidance as set out within the NPPF, I consider that the following extracts from paragraph 7 are particularly pertinent:
- "There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:
- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right

places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

4.03 In relation to rural housing the NPPF (at paragraph 55) states;

- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
  - the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
  - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
  - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
  - the exceptional quality or innovative nature of the design of the dwelling. Such a design should:
    - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
    - reflect the highest standards in architecture;
    - significantly enhance its immediate setting; and
    - be sensitive to the defining characteristics of the local area.

4.04 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 109, states;

The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

4.05 The NPPF prioritises the safeguarding of AONBs at paragraph 115.

Planning Policy for Traveller Sites (PPTS)

4.06 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Whilst regard has been paid to all of the guidance as set out within the PPTS, its main aims now are:

*“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.” (para 3 PPTS)*

*To help achieve this, Government’s aims in respect of traveller sites are:*

- a. that local planning authorities should make their own assessment of need for the purposes of planning*
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites*
- c. to encourage local planning authorities to plan for sites over a reasonable timescale*
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development*
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective*
- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies*
- h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions*
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure*
- k. for local planning authorities to have due regard to the protection of local amenity and local environment.” (para 4 PPTS)*

4.07 In terms of plan making the PPTS advice is that;

*“Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*

- a) promote peaceful and integrated co-existence between the site and the local community*
- b) promote, in collaboration with commissioners of health services, access to appropriate health services*
- c) ensure that children can attend school on a regular basis*
- d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*

- e) *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
- f) *avoid placing undue pressure on local infrastructure and services*
- g) *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

4.08 For sites in rural areas and the countryside the PPTS advice is that;

*“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.” (para 14 PPTS)*

4.09 In relation to the determination of planning applications the PPTS says that;

*“Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and this planning policy for traveller sites.” (para 23 PPTS)*

*“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:*

- a) *the existing level of local provision and need for sites*
- b) *the availability (or lack) of alternative accommodation for the applicants*
- c) *other personal circumstances of the applicant*
- d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
- e) *that they should determine applications for sites from any travellers and not just those with local connections”*

*“However, as paragraph 16 [relating to Green Belts] makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (para 24 PPTS).* Members should note that that the mini paragraph above was added in the 2015 re-issue of PPTS

*“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” (para 25 PPTS).* Members should note that the word “very” was added to this paragraph in the 2015 re-issue of PPTS.

*“If a local planning authority cannot demonstrate an up-to-date 5year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites*



*designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS). Members should note that that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.*

Finally, the definition of gypsies and travellers has been amended in the re-issued PPTS to remove the words “or permanently” from after the word “temporarily” in the following definition;

*“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, but excluding members of an organised group of travelling showpeople or circus people travelling together as as such.”*

The implications for this change in definition has affected the issue with regard to defining need, and this matter is the subject to some very recent changes regarding the Council’s emerging Local Plan which are referred to below.

- 4.10 The Council has responded positively and quickly to the changes in the national policy position in respect of Gypsy and Traveller accommodation. The Local Development Framework Panel quickly supported the commissioning of a new Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided during the plan period (adjusted down from 85 pitches in reflection of those sites granted permanent permission whilst the document was under preparation). This need figure was incorporated within the draft Bearing Fruits Swale Borough Local Plan: Part 1 alongside a policy introducing provision for pitches on certain major development sites. An additional net 47 permanent pitches (some with personal use conditions) had also been approved up to March 2015, reducing the outstanding need to 35 pitches over the Plan period. A further number of pitches enjoy temporary permissions.
- 4.11 Shortly after publication of the GTAA in 2013 the Council began work on Part 2 of the Swale Borough Local Plan which will deal with site allocations for Gypsy and Traveller pitch provision only. This process began with a call for sites between September and December 2013, and the publication of an issues and options paper which was subject to public consultation (this finished on 25<sup>th</sup> April 2014). The Local Plan was subject to examination in November 2015 and the latest position on this is referred to below.

#### Saved Policies of Swale Borough Local Plan 2008

- 4.12 Policy E1 (General Development Control Criteria) sets out standards applicable to all development, saying that it should be well sited appropriate in scale, design and appearance with a high standard of landscaping, and have safe pedestrian and vehicular access whilst avoiding unacceptable consequences in highway terms.
- 4.13 This site lies in an isolated position within the countryside where policy E6 (The Countryside) seeks to protect the quality, character and amenity of the countryside, and states that development will not be permitted outside rural settlements in the interests of countryside conservation, unless related to an exceptional need for a rural location.

- 4.14 Within Areas of Outstanding Natural Beauty policy E9 (Protecting the Quality and Character of the Borough's Landscape) gives priority to the long term protection and enhancement of the quality of the landscape, whilst having regard to the economic and social well being of their communities. Policy E9 seeks to protect the quality, character and amenity value of the wider landscape of the Borough. Within the countryside it expects development to be informed by local landscape character and quality, consider guidelines in the Council's landscape character and assessment, safeguard distinctive landscape elements, remove detracting features and minimise adverse impacts on landscape character. Protection of AONBs is a high priority in the NPPF and they are now afforded recognition in the PPTS, see below.
- 4.15 Policy E19 (Achieving High Quality Design and Distinctiveness) requires development proposals to be well designed.
- 4.16 Policy RC7 (Rural Lanes) seeks to protect the physical features and character of rural lanes, of which Elverland Lane is one.
- 4.17 Policy H4 explains the Borough Council will only grant planning permission for the use of land for the stationing of homes for persons who can clearly demonstrate that they are gypsies or travelling showpersons with a genuine connection with the locality of the proposed site, in accordance with 1 and 2 below.
1. For proposals involving the establishment of public or privately owned residential gypsy or travelling showpersons sites:
    - a) there will be a proven need in the Borough for the site and for the size proposed;
    - b) the site will be located close to local services and facilities;
    - c) there will be no more than four caravans;
    - d) the site will be located close to the primary or secondary road networks
    - e) in the case of a greenfield site there is no suitable site available on previously developed land in the locality;
    - f) the site is not designated for its wildlife, historic or landscape importance;
    - g) the site should be served, or capable of being served, by mains water supply and a satisfactory means of sewage disposal and refuse collection;
    - h) there is no conflict with pedestrian or highway safety;
    - i) screening and landscaping will be provided to minimise adverse impacts;
    - j) no industrial, retail, commercial, or storage activities will take place on the site.
    - k) use of the site will not give rise to significant adverse impacts upon residential amenity, or agricultural or commercial use, of surrounding areas; and
    - l) the land will not be in a designated flood risk area.
  2. Additionally to 1, for proposals for short term stopping places:
    - m) there will be a planning condition to ensure that the length of stay for each caravan will be no longer than 28 days with no return to the site within 3 months."
- 4.18 This policy was criticised by the Local Plan Inspector who saw it, as a criteria based rather than site allocations policy, as inconsistent with the then Circular 01/2006 - which itself has since been superseded by PPTS and its emphasis of a five year supply of sites - and the policy can only be of limited significance to this appeal.

Swale Landscape Character and Biodiversity Appraisal SPD 2011

- 4.19 This site is within the Doddington and Newnham Dry Valleys landscape character areas as defined in the March 2011 Swale Landscape Character and Biodiversity Appraisal, areas which are seen as of high and moderate sensitivity respectively and in good condition.

Bearing Fruits 2031: 2014 Publication version of the Swale Borough Local Plan: Part 1

- 4.20 The Council's Publication version of the draft Local Plan, entitled *Bearing Fruits 2031*, was published in December 2014 and underwent examination in November 2015. The Local Plan Inspector's interim findings are set out below.
- 4.21 Policy CP 3 of the draft Local Plan aimed to provide pitches for gypsies and travellers as part of new residential developments. Policy DM10 set out criteria for assessing windfall gypsy site applications. These policies may now be significantly revised or abandoned as appropriate according to the Council's re-assessment of site need in the light of the changes to PPTS and local progress on site supply. This is discussed below.

#### Site Assessment

- 4.22 The Council's February 2014 Gypsy and Traveller Site Allocations: Issues and Options consultations document recommended a new methodology for how to assess site suitability for determining whether or not to allocate a site. Although this was primarily intended to rank potential site allocations, it was agreed by Members of the LDF Panel in June 2014 to be used as a material consideration in planning applications. Even though this is normally done in relation to the potential suitability of a fresh site I have considered this in formulating this recommendation to be sure that the recommendation is up-to-date. This assessment is a Red/Amber/Green staged approach to site suitability, with any site scoring Red in any stage not being progressed to the next stage.
- 4.23 The assessment starts with Stage 1: Availability. The applicant is in occupation of the site. Here the site scores green. This means that the site should proceed to Stage 2.
- 4.24 Stage 2: Suitability/Constraints. The site is not in a flood risk zone (assessment green); it is in an AONB and is a former traditional orchard, now in need of restoration, but hard by the main Newnham Valley Road and very prominent in public consciousness. The recent occupation of the site has been extremely visually intrusive (boundaries feature predominantly deciduous hedging so for long periods of the year the caravans and vehicle etc. are plainly seen) and harmful to the aims of designation of the AONB. Whilst the caravans have so far been sited only at the bottom of the site, they are prominent even here, and any other siting would only be higher up the site and even more prominent (red); it has very harmful landscape impact (red); it has no unacceptable impact on biodiversity (green); no dominating effect on settlements on its own but there are already three private gypsy sites nearby on temporary permissions (one on adjacent land and two others across the otherwise unpopulated Elverland Lane). Furthermore, a recent planning application for a further private site nearby was recently refused by the Council. If an appeal is lodged there it will indicate sustained pressure for sites here which taken together will have a significant effect on such a sparsely populated and otherwise unspoilt area (amber); no adverse impacts on heritage/archaeology (green); is not known to be contaminated (green); will not be subject to unacceptable noise or disturbance (green); has dangerous access which the highway authority have raised formal

objection to (red); and is remote and not within walking distance to any significant facilities (red). The red scores mean that it is not a site considered to be suitable as a permanent site, and that the site should not proceed to Stage 3 and will not be a candidate site for any future allocations policy (if such a policy were now to be produced). The site assessment scoring sheet is attached as an appendix to this report.

- 4.25 The arrangements for production of Part 2 of the new Local Plan included consultation upon a preferred options document in Summer 2014. The future of and need for Part 2 of the Local Plan was expected to be dependent upon the successful adoption of Part 1 of the Local Plan. It was intended that should the Local Plan Inspector find problems with Part 1 of the Local Plan, Officers were likely to suggest that all pitch provision matters be deferred to Part 2 to enable Part 2 of the Local Plan to progress independently of Part 1. The latest position on this issue is referred to below.

#### Five year supply position

- 4.26 The PPTS has since 2012 introduced a need for Council's to maintain a rolling five year supply of sites which are in suitable locations and available immediately. This is a relatively new requirement for Council's and the Council could only start attempting to meet this requirement following the commissioning and publication of the GTAA which provided the need figure and a base date. As such, the Council put measures into place to deal with the PPTS requirements very quickly, but have only recently started down the route of trying to maintain a rolling five year supply.
- 4.27 The GTAA sets out a target of 85 pitches to be provided by the year 2031, with a suggested provision of 35 pitches in the first five years (to 2018). Three pitches were approved during the course of the GTAA's production so the final target was in fact 82 pitches. Since the publication of the GTAA and up to the end of March 2015 a total of 47 permanent pitches were approved in Swale almost exclusively without an appeal, of which 33 pitches had been implemented. Evidence presented to the recent Local Plan examination shows that at the end of March 2015 the need for pitches identified from the GTAA thus stood at 82 pitches minus the 33 permanent pitches approved and implemented, including the personal permissions granted in the interim. This reduced the need to 49 pitches which, at an annualised rate of 4.6 pitches per year (23 pitches over five years) indicated that the Council has already provided a surplus of supply of 0.8 pitches over the full five year requirement. This was calculated by taking the two year annualised requirement of 9.2 pitches from the completions so far to show a current surplus of 23.8 implemented pitches over the two year requirement and already a surplus of 0.8 approved permanent pitches over the five year need after just two years. In addition to this there were a further 13 approved but unimplemented permanent pitches as at the end of March 2015, an overall surplus of 14 pitches. These mostly comprised extensions to, or more intensive use of, existing sites and were awaiting occupation. Since then six more wholly new permanent sites have been approved including two fresh pitches on a large mixed use development site at Faversham. This is a very considerable achievement and indicates the Council's positive attitude to such development in the right location.

#### The latest position of site provision

- 4.29 The revised PPTS (2015) has resulted in considerable uncertainty as it changed the planning definition of a traveller and gypsy, and therefore what number of required pitches need to be identified. Evidence to the recent Local Plan examination was that the Council has re-interrogated the GTAA data to determine the appropriate level of

pitch provision based on the new 2015 PPTS revised definition of gypsies and travellers. The data revealed that for all but unauthorised sites some two-thirds of households surveyed for the GTAA either never travel or travel not more than once a year. Overall, only 31% of respondents travel a few times a year, and 55% never travel, meaning that in Swale the gypsy and traveller population is quite settled, slightly more so than elsewhere in the country. Many current site occupants no longer meet the new PPTS definition of having a nomadic habit of life

- 4.30 Accordingly, the need for pitches in Swale has been re-evaluated, resulting in a reduced estimate of pitch need of 61 pitches over the Plan period to 2031. Of these, over 51 have already been granted permanent planning permission meaning that the outstanding need is less than 10 pitches to 2031. The Council considers that on the basis of past trends this need could easily be met from windfall proposals.
- 4.31 As a result of this analysis, the Council is suggesting through main modifications to its draft Local Plan that the future need be based on a figure of 61 pitches, leaving a need per year of less than one pitch and, that no formal pitch allocations will be needed. Policy DM10 would be revised to deal with these windfall applications and policy CP3 would be removed from the Plan. Accordingly, a Part 2 Local Plan would not be required.
- 4.32 The Local Plan Inspector's third interim report (March 2016) fully supports the Council's proposed position regarding gypsy and traveller site provision, accepting that the remaining need for sites can be managed by windfall applications and without a Part 2 Local Plan. The Inspector also accepts that the Council should revise draft Plan policies to reflect progress on site provision whereupon the Plan will be effective and consistent with national policy
- 4.33 At a more local level the Council is a contributor to the Kent Downs AONB management unit which has recently published its second revision to the Kent Downs AONB Management Plan (2014 – 2019). This included policies SD1, SD2, SD3, SD8 and LLC1 of the Plan, which refer to the need to conserve and enhance the natural beauty of the AONB being the prime purpose of the designation, with new development respecting the area's character, quality and distinctiveness, with development that runs counter to the primary purpose of the AONB, or its distinctive landform, special characteristics or qualities being opposed.
- 4.34 Finally, the Government's Chief Planner announced on 31 August 2015 (the same day PPTS was re-issued) a policy that from that date all applications and appeals that involve intentional unauthorised development this fact can be a material planning consideration. In this case the site was occupied over a weekend without prior warning and without the necessary planning permission. The site had previously been owned by a different gypsy family who had not carried out any unauthorised development on the site. However, after local concerns over activity on the site reached the Council a Land Registry search was carried out (7 December 2015) and it was revealed that the current applicant had recently purchased the land (27 November 2015). The Council then immediately wrote to the applicant at her registered address to make clear the planning situation on the site and to discourage any unauthorised development. This letter was sent on 8 December but, notwithstanding that letter the site was occupied over the weekend of 12/13 December 2015.

## 5.0 LOCAL REPRESENTATIONS

5.01 I have received over 50 local representations from a wide ranging local area. These make the following summarised points;

- The site lies in the Kent Downs AONB which the Council has a duty to protect; caravans do not protect this nature
- Contrary to Local Plan policies to protect the countryside
- The applicant has run roughshod over the planning system and retrospective planning permission should not be granted – this would make a mockery out of the planning system
- Gypsy status should not be allowed to authorise the destruction of the countryside
- Swift action should be taken to return the land to its former condition
- The site is extremely open and visible from the road and is an eyesore in a place entirely unsuitable for caravans
- The applicants have shown complete disregard for the AONB
- Productive fruit trees have been illegally cleared
- Orchids have been destroyed
- Local wildlife may be at risk
- Hardstanding has been laid
- This is a water catchment area and a cesspit may pollute local water supplies
- Badgers may have been disturbed
- The site is not in a sustainable location with no nearby amenities, schools or public transport, and close to other sites that have been found to be unsuitably located
- The junction at the foot of Elverland Lane is unsafe
- The site is at risk of flooding from the road
- There are a large number of vehicles and outbuildings for just two caravans
- Fences have been erected and the plot might be divided in two with additional occupation and a new access to Faversham Road
- The scale of the site dominates the local settled community
- There is now adequate provision for gypsies and travellers in the Borough in far more suitable locations
- Personal circumstances should not outweigh the need to protect the AONB
- Will affect local house prices
- If approved the site will spell the start of an irreversible decline in the area

5.02 The Faversham Society has objected to the application as the site has not been designated as a gypsy site and therefore occupation is unauthorised and premature; also the site is within an AONB.

5.03 One letter in support of the application suggests that hardly any objectors live nearby and are only affected when driving by. The writer says that everyone needs somewhere to live, that the site is innocuous and a little more diversity will harm no-one.

5.04 As the publicity period regarding the new Design and Access Statement and Block Plan information extends until 30 March I will update Members at the meeting.

## **6.0 CONSULTATIONS**

6.01 Newnham Parish Council opposes the application on the following grounds;

- There is a change of use from orchard to residential use

- What will happen to waste collection?
  - Will the cesspit be near to the water supply?
  - Has the site been tested for newts and biodiversity?
  - Trees have been removed
  - There are a large number of vehicles for the number of mobile homes
  - The entrance is on a dangerous junction
  - The site is within an Area of Outstanding Natural Beauty
- 6.02 Ospringe and Doddington Parish Councils both object to the application within the AONB, saying that the site is of a significant scale but unsustainable with harm to local landscape character and an unsafe access. They note that the application is contrary to Local Plan policies and that the Council has now approved sufficient sites not to require temporary or permanent permissions in the AONB. Issues of flooding are also raised.
- 6.03 Kent Highway Services object to the application as the site entrance does not have sufficient visibility sightlines and is close to the existing junction, so being to the detriment of highway safety.
- 6.04 The Environment Agency does not raise objection to the application on groundwater protection grounds.
- 6.05 The County Archaeological Officer does not see any archaeological measures as needed with this application.
- 6.06 The Kent Downs AONB Management Unit have objected to the application, saying that sites here should be protected to conserve the natural beauty of the landscape, and that this site lies in a particularly attractive, undeveloped and remote part of the Borough. They consider that the proposal will detract from the landscape character of the locality and fail to conserve the natural beauty of the area, contrary to policies of the AONB management plan.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Papers for application 15/510499/FULL and other applications mentioned above.

## **8.0 APPRAISAL**

- 8.01 My starting point for consideration of this application is the provisions of the saved policies of the Swale Borough Local Plan 2008 and the Council's published site assessment criteria for gypsy and traveller sites. Policies E6, E9 and RC7 seek to resist development in the countryside and to protect valued landscapes and rural lanes. There is no doubt that the site is not generally suitable for residential development or use as a caravan site as it is located in open countryside, well outside any defined settlement designated as suitable for residential development, and that saved policy E6 seeks to protect the wider countryside from development except in specific exceptional circumstances. It follows that the granting of planning permission for the proposal would seriously undermine the effectiveness of local rural settlement policy and thus have adverse implications for the character of the countryside, unless it satisfies at least one of the exceptions that justify a departure from the development plan.

- 8.02 Elverland Lane is classified as a rural lane and the proposal to use this site for caravans would significantly harm its character to the extent that a refusal of planning permission on grounds of being contrary to saved policy RC7 is sustainable.
- 8.03 The weight to be given to AONB landscape protection remains a strong national policy. Occupation of the appeal site has a significant landscape impact that would be a clear reason for refusal of planning permission as supported by saved policy E9. The site could be further landscaped but this would not reduce its impact significantly, unless it is to be hidden completely, contrary to good planning practice and to paragraph 26 of PPTS.
- 8.04 That is the normal background to a decision here, but on the basis of the applicant's evidence that she and her family have gypsy status, issues relating to the supply of sites and their appropriateness in AONBs will be of relevance. The Council's own 2008 policy H4 seeks to exclude sites that are not well related to services and amenities, or are designated for landscape value, both of which apply here. However, that policy is of little weight having been left in the Local Plan almost by default, and when Circular 1/2006 was to be preferred. That Circular has now been superseded by PPTS (it too having since been revised) and it is this that will be the principal policy that should be looked to, along with the wider NPPF and the Council's own published site assessment criteria.
- 8.05 The NPPF seeks to protect Areas of Outstanding Natural Beauty and PPTS states that sites in open countryside away from settlements should be very\* strictly controlled (\* very was introduced into this sentence in August 2015). In my view this policy has three purposes which are to minimise visual harm to the countryside, ensure sites are not isolated from the settled community and, to ensure sites are sustainably located.
- 8.06 The idea that conserving the landscape and natural beauty of the AONB by introducing incompatible development and then attempting to screen it is the wrong approach. Furthermore, this approach is directly contrary to PPTS guidance which seeks greater openness and can only serve to raise the sense of social exclusion of the site occupants; hiding them away from the world. It is also true that in this case the PPTS demand for greater openness is in direct conflict with preserving the natural beauty of the AONB.
- 8.07 Overall, I consider that the landscape impact of this site is overriding and that further landscaping is not the solution to any objection on landscape grounds, sufficient to warrant a refusal of planning permission.
- 8.08 Notwithstanding this matter, the site is very poorly located both for integration with any local community, or for a sustainable form of development. There are few facilities close to the site and any access to amenities will involve the use of private transport. Saved policy SH1 of the Local Plan identifies a settlement hierarchy for the Borough where various levels of development might be appropriate. This isolated location is not one where there is ready access to amenities. It thus fails to meet the second stage of the Council's published site assessment criteria.
- 8.09 In this regard the nature of the site is far more remotely located than one at Spade Lane close to the Medway conurbation that was subject of an appeal decision regarding a proposed gypsy or traveller site in October 2014. In that case (APP/V/2255/C/14/2220447) the Inspector considered whether the use of that site close to a major population centre with a wide range of facilities as a gypsy or traveller site constituted sustainable development. He noted that locational sustainability depends on a range of factors which are neither constant nor easy to measure with



confidence. Nevertheless, he concluded that the site was “in a location where the overwhelming majority of journeys to shops, to school, to the doctor or to most other facilities and services would be undertaken by car.” He added that “The distances involved, the absence of any public transport in easy reach, the character of the lanes along which people would travel, and the unattractiveness at night, in winter or in bad weather of any short cuts provided by local PROWs, would obviate journeys on foot other than for the fittest and/or most enthusiastic of walkers.” His conclusion was that the sustainability benefits of the proposed development were minimal and more than outweighed by significant and demonstrable disadvantages. I consider that similar conclusion apply with even greater force here where the site is far further from amenities and where the roads and lanes in question are also without footpaths or street lighting.

- 8.10 If further evidence were needed, there have been three recent appeal decisions relating to private gypsy and traveller sites in Elverland Lane close to the current appeal site in 2007, 2011 and 2012. In the 2007 appeal decision at the site then known as Tootsie Farm (immediately adjacent to this site) the Inspector commented that;

*“I am also not convinced that this is a particularly sustainable location for a Gypsy site. I appreciate that Billy seems to have coped with school in Faversham on his bike and proposes to use bike and train to go to college in Canterbury. While it meets the current needs of the family it is in a relatively remote and sparsely populated location some distance from services which in the main are to be found in Faversham. However, I do not consider it so unsuitable a location as to rule it out were that the only area of concern.”*

Nevertheless in January 2012 (pre PPTS), a different Inspector commenting on the same site said that;

*“As to **sustainability** the evidence strongly suggests that there are more sustainable locations for G&T development than the appeal site, which in effect adds to the scatter of residential development in the open countryside. There is no reason to doubt that the eventual allocation of sites to meet G&T pitch needs, whether within the Borough or within this area of Kent as part of a joint effort by a group of local authorities complying with their duty to cooperate, will be in more sustainable locations and circumstances than the appeal site. This has considerable weight as an objection to the grant of a permanent permission for the appeal use. On the other hand, until adequate pitch provision is made elsewhere account should be taken of the advantages of providing, even on a temporary basis, for those who lack alternative accommodation and would therefore otherwise be moving between potentially more unsatisfactory temporary locations. This point is referred to in paragraph 64 of ODPM Circular 1/2006, and in this case I consider it to balance harm to sustainability objectives in the short term.”*

Finally, at Horseshoe Farm, Elverland Lane (opposite Tootsie Farm) an Inspector in May 2012 (post original PPTS) stated that;

*“19. Paragraph 11 of the PPTS requires traveller sites to be sustainable economically, socially and environmentally. The appeal site is remote from all services and facilities and is not well located in relation to any settlement so as to foster social inclusion. It is isolated, in a sparsely populated area and there is environmental harm as identified above. Although there are two other gypsy sites nearby, they are not lawful.*

*20. A positive factor is that the Applicant has his horse keeping and breeding business based on the land on which he lives which reduces daily travel. There are also the recognised benefits arising from having a permanent base, such as being able to access health services more readily and reducing any need to move around on unauthorised sites. But those are benefits which arise in the provision of any permanent site and do not outweigh the disbenefits arising from the isolated location in this case.”*

- 8.11 On the basis of this consistent view from recent Planning Inspectors, and bearing in mind the results of the Council’s own site assessment criteria (see above) I consider that this location is too remote from services and amenities to be acceptable as a permanent gypsy or traveller site. I consider that the limited remaining need for sites in the Borough can more properly be met in far more suitable locations and that use of this site fails to meet the environmental role necessary to be considered sustainable development in terms of the NPPF definition.
- 8.12 The site is accessed via the original field gate entrance which sits squarely within the right-angle junction of Elverland Lane with the Newnham Valley Road. This junction has limited visibility for traffic emerging from Elverland Lane and Newnham Valley Road carries fast moving traffic to many rural communities and across from the A2 to the A20/M20 at Maidstone. This junction is not ideal even for regular additional use. However, the concealed and awkward nature of the junction with no visibility for emerging drivers has caused the Highway Authority to object to the application on highway safety grounds.
- 8.13 Policy T1 of the adopted Local Plan is clear in its desire not to see highway safety prejudiced by development, and this development can only put this safety at risk.

The extent of need for gypsy sites locally and the 5 year site supply issue.

- 8.14 The key issue in this respect is the Council’s need to demonstrate a five year supply of available and appropriate sites sufficient to meet the need within the Borough. The PPTS sets out very clearly that Local Planning Authorities should have regard to, amongst other things, the existing level of local provision and need for sites, and the availability (or lack) of alternative accommodation for the applicant/applicant.
- 8.15 The current position with site supply is that the Council has commissioned a GTAA which now provides an up-to-date assessment of the need for pitches up until the year 2031. This has quantified local future need, but a very significant number of sites have since been approved. In fact over 5 year’s supply of sites have been approved within the first two years with more approved subsequently. The Council’s supply of sites is now running above trend meaning that the release of sites such as this one is completely unnecessary. More significantly, the remaining need for sites is small, and the Local Plan Inspector has accepted the Council’s re-assessment of site need on the light of the revised PPTS, such that any need to see this site developed has been removed

The applicant’s own circumstances.

- 8.16 The Council made relevant enquiries regarding personal circumstances when the applicant first occupied the site. The applicant has also submitted a number of documents and details regarding gypsy equality issues, her own family circumstances and her gypsy status with the retrospective planning application. This was partly at my express request, and I have had regard to this information in its following comments.

Gypsy status.

- 8.17 The applicant has sent details of her family's attendance at Horse Fairs, Fairs and Events throughout the year, as well as at other unspecified cultural and family events. The applicant explains that the family also continue to travel for work for a significant part of the year, and explains that her family have also stayed at different camps when working way on the roads. This she suggests satisfies the test of gypsy status.

Health issues.

- 8.18 The applicant has also submitted an Education and Health Statement. This largely rehearses widely known issues about the health and educational issues affecting gypsies and travellers, but also sets out some details of the family members' health issues. These relate principally to the applicant's husband who has on-going health issues, and to her grandson (aged 7) who has learning and behavioural problems for which he is receiving specialist medical help. Letters from the grandson's school (which he started at in January 2016) and from the NHS to the school along with details of his referral to the CAMHS (Child and Adolescent Mental Health Services) have been provided on a confidential basis. The applicant's daughter is also being prescribed medication.

Equality and Human Rights issues

- 8.19 The Design and Access Statement notes that elsewhere, strongly compelling personal circumstances have carried significant weight along with identified need for sites and a lack of reasonable alternative sites. The statement refers to the United Nations Convention on the Rights of the Child which requires that a child's best interests be a primary consideration, and to the European Convention on Human Rights that requires respect for family and private life.
- 8.20 The Statement confirms that the applicant has gypsy status for planning purpose and would accept a personal planning permission as it is important that the family has a stable place to live and access education and healthcare. The Human Rights Act is referred to as is the entitlement of gypsies and travellers to their traditional way of life, which involves living in caravans. These issues are said to amount to "Very Special Circumstances" which are material to the planning application.
- 8.21 Finally, the applicant has submitted a number of documents relating more generally to the issue of racial discrimination especially in relation to gypsies both from the UK and the Council of Europe and UNHCR.

The balance between the above issues

- 8.22 The appeal site is very remote from social, health and educational facilities, has a significantly harmful impact on the natural beauty of the Kent Downs AONB, has a serious highway safety problem, and is not a site where a permanent planning permission ought to be granted on the basis of current policies. Nor is the need for sites so overwhelming that such an unsuitable site should be approved. Finally, I do not consider that the applicant's personal circumstances so significant to suggest that a personal planning permission should be granted in the face of such overwhelming objections.

Whether a temporary permission might be appropriate if a permanent permission is not.

- 8.23 The revised PPTS now makes it very clear that personal circumstances are unlikely to clearly outweigh harm to the AONB sufficient to grant a temporary permission, even where the supply of sites is inadequate. The exception here is where the best interests of a child might indicate otherwise (see Article 3 of the United Nations Convention on the Rights of the Child (UNCRC)). It is quite clear to me that in taking a

decision which affects children the decision maker should understand and take proper account of the best interests of the child involved. This issue also relates to Article 8 of the European Convention on Human Rights (Right to a Private and Family Life). I have made enquiries of the applicant and circumstances relating to her husband, daughter and grandson have been revealed, either in medical or educational term (or both). I can understand the benefits of a settled site for all these issues, but it is not clear to me how by settling on this remote site, on what must only at best be a temporary basis, the best interests of the family or children will be best served. Moreover, whilst the best interests of the child will always be a primary consideration, this does not mean that identifying their best interests will inevitably lead to a decision in conformity with those interests.

- 8.24 Even taking the best interests of the children involved here to have a settled base (as their parent and grandparents desire) I ask whether this can be outweighed by any combination of other factors, which individually do not outweigh that consideration. I find that the combination of significant factors including the impact of the development on policies to protect the countryside; significant harm to the AONB; the remote location and lack of accessibility to vital social, health, and in time educational, facilities; highway safety issues; and the intentional unauthorised development issue; create powerful counter arguments for the need for a settled base to be met on this site. That is not to say that the need cannot or should not be met elsewhere in the Borough (or beyond) where all these factors might not be present.
- 8.25 A temporary planning permission is a useful device to allow a family time to relocate from an unacceptable site without resorting to roadside living, with the attendant health, welfare and educational challenges that brings. However, in this case the national policy is not to grant temporary planning permission in an AONB and, given that the Council will not be allocating the appeal site or any other sites for the foreseeable future, the applicant will be best served by finding an alternative permanent site elsewhere sooner rather than later. There seems to me no benefit in extending the applicant's current occupation of the appeal site as this will simply drag out the inevitability of relocation, and resulting in further harm to the AONB by consolidation of development, and the possibility of inappropriate tree planting as has happened on the adjacent Tootsie Farm/HillTop Farm site and elsewhere (and which is extremely hard to resolve under planning powers). I have also had regard to the Inspector's comments in the Spade Lane appeal decision in relation to the granting of a temporary planning permission, which he dismissed. He found that the granting of a temporary permission creates some expectation of future permanence, but he saw no realistic prospect of circumstances there changing in the near future. He noted that the site would still be in open countryside and with poor relationship to services. He also noted that harm is often greatest in early years when landscaping has not had time to establish, and that the applicant's position was not urgent. I consider that many of these factors apply to this case, reinforcing my conclusions above. I do not consider that a temporary planning permission should be granted.
- 8.26 The applicant's evidence of a need to live on the site for personal, health, or educational reasons is understood. Having considered why a temporary permission might be appropriate I can find insufficient reason to grant one, and I consider that a decision not to grant a temporary permission is proportionate to the interference with the applicant's human rights and the Council's need to consider the best interests of the child as a primary consideration.

## 9.0 CONCLUSION

9.02 I have considered the applicant's gypsy status and the need for sites, but have concluded that site supply is well advanced and as the area is very poorly served by amenities; that significant harm to the AONB and to highway safety would result, and that the site does not score well enough in relation to the Council's gypsy and traveller site assessment criteria to be suitable for a permanent planning permission. I also note that the issue of intentional unauthorised development is engaged here and I give this some weight. I have considered whether a personal or temporary planning permission would be appropriate and have concluded that it would not. I therefore conclude that the proposed development should not be granted planning permission.

**10.0 RECOMMENDATION – REFUSE** for the following reason.

#### **REASON**

- 1 Notwithstanding the Council's appreciation of the need for it to respond positively to the accommodation needs of gypsies and travellers, and the guidance in DCLG's Planning Policy for Traveller Sites (2015), the Council considers that this site is unacceptable as a gypsy or traveller site. The site is isolated in open countryside away from any social, health, educational or other amenities, and lies within the Kent Downs Area of Outstanding Natural Beauty and the siting of caravans and the associated hardsurfacing creates an alien and intrusive appearance to the site which harms the natural beauty, character and appearance of the area. The proposal to use the site for the stationing of caravans compromises the objectives of designation of the Area of Outstanding Natural Beauty which are the conservation and enhancement of the area's natural beauty, and is contrary to the advice in paragraph 12 of the NPPF, paragraphs 4, 23, 25 and 27 of the PPTS and to saved policies E1, E9 and RC7 of the Swale Borough Local Plan 2008. The Council has taken account of the position in terms of the supply of gypsy and traveller sites, the health issues of the applicant and her family, and considered whether a permanent or temporary planning permission should be granted. Despite appreciating the personal circumstances of the applicant's family, the Council does not consider that a permanent or temporary planning permission represents an acceptable balance between the need for gypsy and traveller sites in the Borough and the personal circumstances of the applicant's family, and the very substantial harm that occupation of the site causes to planning policy for the appropriate location of gypsy or traveller sites in terms of access to services and amenities, or on the character and appearance of the area. In taking account of all these factors the Council's considers that this proposal does not represent sustainable development, and that planning permission should be refused.
  
- 2 The proposal will result in an increase in use of the existing sub-standard access, lacking in sufficient visibility sightlines and close to an existing junction, which would be to the detriment of highway safety and contrary to saved policy T1 of the Swale Borough Local Plan 2008.

#### **Council's approach to the 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.

The Retreat, Newnham Valley  
15/510499 FULL

Gypsy and Traveller Site Allocations Assessment Methodology

Stage 1 - Is the site available?

Site Assessment Table: Stage 1 - Site availability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Availability		Owner confirmed site not available, nor is likely to become available over plan period	Site availability uncertain	Willing landowner ✓
Is the site available and deliverable?				

IF RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 2.

Stage 2 – Suitability/ Constraints

Site Assessment Table: Stage 2 - Suitability

Criteria and Issues	Assessment references in addition to National Planning Policy Framework (NPPF), National Planning Guidance (NPG)	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green – Fully meets criteria
Flood Zone	Swale Strategic Flood Risk Assessment (SFRA) and Environment Agency guidance	Flood zone 3/ cannot be mitigated	Flood zone 2 or 3 but with acceptable mitigation to the satisfaction of the Council and Environment Agency	Flood zone 1 ✓
Landscape	Kent Downs AONB Management Plan 2009, Landscape Character and Biodiversity Appraisal SPD, Advice from Natural England and other environmental bodies	Site is within 1. a landscape designation, or 2. will affect the setting of a designation, or 3. is within an Area of High Landscape Value with unacceptable detrimental impact or where landscape impact cannot be mitigated including cumulative impacts ✓	Within close proximity of a designated area but, and where landscape impact may be mitigated	Outside designated area and not affecting the setting of a designation/ No impact ✓
Biodiversity	Advice from KCC Archaeology Officers, UK/ Kent/ Swale BAP, advice from Natural England and environmental bodies	Site is within or affecting international, national or locally designated sites with unacceptable detrimental impact or where impact cannot be mitigated including cumulative impacts	Site is within, close proximity to or affecting international, national or locally designated sites where impact could be mitigated	Outside of any designation and not affecting the setting of a designation/No impact ✓
Scale of site or multiple sites	Officer assessment - considering quantity of existing sites against scale and form of existing settlement/settled community and advice from service providers	Has significant dominating effect	Scale has some impact ✓	Scale has little or no impact
Archaeology and	Heritage asset list and advice from heritage	Unacceptable detrimental impact on scheduled	Possible impact /minor impact on scheduled	Not in close proximity to Scheduled Ancient

<b>Conservation</b> Impact on Scheduled Ancient Monument or other heritage asset/non designated heritage asset	advisors	ancient monument/other heritage asset/non designated heritage assets	ancient monument/other heritage asset/non designated heritage assets	Monument/other heritage asset/non designated heritage assets
<b>Contamination</b> Unacceptable living conditions	Consult Land Contamination Planning guidance Document 2013 and Contaminated Land Strategy 2010	Site is contaminated and cannot be mitigated	Site is or is potentially contaminated - potential impact likely to be mitigated	No known contamination issues
<b>Noise and disturbance issues</b> Unacceptable living conditions	Consult Noise and Vibration: Planning Guidance Document 2013	Site located adjacent to noisy land use - cannot be mitigated	Site located adjacent to noisy land use - potential impact likely to be mitigated or low level	No noisy adjacent land uses
<b>Site access and safety</b> Access/Proximity to major roads and pedestrian routes	Any transport information submitted and Kent Highways Services assessment/advice	Remote location accessed by unmade roads/ poor roads or unresolvable highway safety issue	Some access to road network and site - potentially requiring mitigation or highway safety issue and possibly capable of mitigation	Good site and road access and no significant highway safety concerns
<b>Accessibility to facilities</b> GP surgery, Primary School, Shops, Public Transport	Desk top review	None or few within reasonable distance	Reasonable distance to most services	All within reasonable travelling distance

IF ANY SCORE RED THE SITE SHOULD BE DISCOUNTED AT THIS STAGE. ALL OTHER SITES SHOULD PROCEED TO STAGE 3.

**Stage 3 - More detailed site suitability**

Site Assessment Table: Stage 3 - Detailed suitability

Criteria and Issues	Assessment references	Red – Does not meet criteria	Amber – May be capable of meeting criteria	Green- Fully meets criteria
<b>Topography</b> Uneven or unsafe ground levels and structures	Site survey by Officers and landscape evidence submitted	Steep slope which makes site unsuitable	Sloping land which may require works to make site suitable for use	Level or gently sloping site
<b>Residential Amenity</b> Impact on amenity of proposed and existing residents	Officers' assessment - same as housing, overlooking, disturbance from vehicle movements, loss of light, overcrowding etc	Close proximity to existing adjacent uses especially residential properties where any potential impact (light, visual, other disturbance). Has unacceptable impact which cannot be mitigated	Some impact on residential amenity - likely to be mitigated or low level	No impact on residential amenity
<b>Utilities</b> Electricity, Gas, Water, Drainage/ Sewers (mains or cesspit)	Site visit and utility providers advice	Not applicable as a reason for discounting a site	Yes – most (3 or 4)	Yes – all
<b>Site capable of live/ work mix</b> Priority for sustainable	Site visit/ submitted details	Not applicable as a reason for discounting a site	No or maybe	Yes



locations				
<b>Parking</b> Sufficient parking and turning space	Site visit and Kent Highways Services advice	No parking/ turning and no potential to provide parking and turning space	Inadequate parking/ turning or limited potential to provide parking and turning space	Sufficient parking and turning space
<b>Landscaping</b> Sufficient landscaping for amenity/impact on landscape character	Site visit and Swale Landscape Character and Biodiversity Assessment 2010, Planting on New Developments: A Guide for Developers	<b>Not applicable as a reason for discounting a site</b>	No soft landscaping/ landscaping could impact on landscape character area	Site has existing soft landscaping/ option to provide soft landscaping

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**PLANNING COMMITTEE – 7 APRIL 2016**

**PART 5**

Report of the Head of Planning

**PART 5**

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

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- **Item 5.1 – Land adjacent to Laburnum Villa, Parsonage Chase, Minster**

**APPEAL ALLOWED**

**Observations**

DELEGATED REFUSAL:

A very disappointing decision. The Inspector did not agree that the proposed development would harm the character and appearance of the area and allowed the appeal accordingly

- **Item 5.2 – Land adjacent to Rushett Bungalow, Rushett Lane, Norton**

**APPEAL ALLOWED**

**Observations**

DELEGATED REFUSAL:

A hugely disappointing decision resulting from different Inspectors not seeing the overall gradual creeping nature development here, which the Council has been consistently trying to curtail in the interests of the rural character of the area.

- **Item 5.3 – Land adjoining slip road at Thanet Way off High Street Road, Hernhill**

**APPEAL DISMISSED AND ENFORCEMENT NOTICE UPHELD  
APPLICATION FOR COSTS REFUSED**

**Observations**

ENFORCEMENT APPEAL:

Full support for the Council's actions.

- **Item 5.4 – 11 Hustlings Drive, Eastchurch**

**PLANNING AND ENFORCEMENT NOTICE APPEALS ALLOWED**

## **APPLICATION FOR COSTS REFUSED**

### **Observations**

#### **ENFORCEMENT NOTICE AND COMMITTEE REFUSAL:**

A disappointing decision. Members may recall I had recommended this application for approval.



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## Appeal Decision

Site visit made on 12 January 2016

**by Andrew Steen BA(Hons) DipTP MRTPI**

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

Decision date: 26<sup>th</sup> February 2016

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**Appeal Ref: APP/V2255/W/15/3133632**  
**Land adjacent to Laburnum Villa, Parsonage Chase, Minster on Sea, Sheerness ME12 3JX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
  - The appeal is made by Mr R Parmar against the decision of Swale Borough Council.
  - The application Ref 14/504382/FULL, dated 1 October 2014, was refused by notice dated 31 July 2015.
  - The development proposed is infilling of existing pond and development of 2 x pairs of three bedroom semi detached properties with associated parking.
- 

### Decision

1. The appeal is allowed and planning permission is granted for infilling of existing pond and development of 2 x pairs of three bedroom semi detached properties with associated parking at land adjacent to Laburnum Villa, Parsonage Chase, Minster on Sea, Sheerness ME12 3JX in accordance with the terms of the application, Ref 14/504382/FULL, dated 1 October 2014, subject to the conditions listed in the schedule at the end of this decision.

### Preliminary matters

2. I noted on my site visit that the infilling of the pond has taken place.

### Main Issue

3. The main issue in this appeal is the impact of the proposed dwellings on the character and appearance of the area with particular reference to the location of the houses on the site and the parking arrangements.

### Reasons

4. Parsonage Chase is a residential street of mixed character, with a variety of single storey and two storey houses of mixed ages. The existing dwelling on site is a two storey semi-detached Victorian house. The proposal would provide four semi-detached dwellings of a style and appearance that would in their general style reflect that of Laburnum Villa, albeit with rooms in the roof. The proposed houses would face the access drive and sit, as does Laburnum Villa, at a right angle to Parsonage Chase.
  5. The development proposed includes an extension to the existing dwelling, to which the Council raises no objection. Neither does the Council raise any
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Appeal Decision APP/V2255/W/15/3133632

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objection to the external appearance of the proposed dwellings. I see no reason to disagree with their conclusion on these matters.

6. The dwellings on the approach along Parsonage Chase are on a fairly consistent building line, with narrow gaps between buildings. Between the end of those houses and the front of the proposed dwellings there would be a much larger gap formed by the side garden of the last of the houses north of the site and the access drive and parking areas of the proposed dwellings. This substantial degree of separation and the slight bend in the road at this point, would ensure that the development, despite standing forward of the building line of houses to the north, would not appear jarring or inappropriately prominent as it would be seen as a separate and distinct development.
7. As the external appearance of the proposed development would reflect the existing semi-detached dwellings adjacent, this location would add visual interest to the street scene and not harm the character and appearance of the area.
8. Parking is proposed to the front of the dwellings, but as the building would be orientated towards the access drive it would not dominate Parsonage Chase. Further landscaping on the frontage to Parsonage Chase together with the, albeit narrow, planting areas between parking spaces would soften the appearance of the development. As a result, the parking would not have an adverse impact on the character or appearance of the area.
9. I conclude therefore, that the proposed dwellings would not harm the character and appearance of the area. The development complies with Policies E1 and E19 of the Swale Borough Local Plan that seek to ensure a high quality of design that makes efficient use of land and reflects positive characteristics and features of the site and locality.

*Other Matters*

10. Although not previously developed land, the proposed development would represent an efficient use of land within the urban area, with a density that reflects the surrounding area. There is a substantial distance between the proposed and neighbouring dwellings that ensures they would not be unacceptably overlooked or overshadowed. The fact that the developers are not local and there would be no clear benefit to the local population from the development are not matters which would justify withholding permission.
11. There is no parking proposed for Laburnum Villa, but this property does not currently benefit from off road parking and no harm in this respect would therefore result. The access and parking arrangements proposed would be satisfactory and there is no evidence that highway safety would be compromised.
12. I note neighbour concerns regarding water pressure, drainage and flooding issues in the locality but I have been provided with limited information in this regard and there have been no concerns raised by relevant service providers or statutory undertakers. Ecological surveys have been provided that assess the potential of the site to provide habitats for protected species and these demonstrate that development can take place subject to mitigation that can be required by condition.

Appeal Decision APP/V2255/W/15/3133632

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### Conditions

13. I have imposed a condition specifying the relevant drawings as this provides certainty. A condition is necessary for details of materials to be submitted to ensure that they would maintain the character and appearance of the area. Approval, implementation and retention of landscaping works, including hard surfacing and means of enclosure, are necessary in order to ensure the development would reflect the character and appearance of the area. A condition is necessary to ensure adequate parking is retained on site to reduce pressure of parking on the highway.
14. A condition is necessary to ensure no side windows are installed into the dwellings that may cause overlooking of neighbouring properties, in order to protect neighbouring occupiers' living conditions. As there is likely to be a reduction in light to the rear bedroom of the existing dwelling from the proposed development, a condition is required to ensure the secondary window in the side of that bedroom is provided. As that is forward of the proposed dwellings and would not overlook their private amenity areas or into those dwellings, this is not required to be obscure glazed. I do not consider that the rear extension is required to be completed prior to construction of the dwellings, so have removed that element from the condition suggested by the Council.
15. Conditions are necessary to ensure the development is carried out in accordance with the recommendations of the submitted tree and ecological surveys in order to protect trees and the habitat of protected species. Conditions requiring additional ecological enhancements or provision of sustainable construction techniques go beyond what is necessary to make the development acceptable in planning terms. In some cases I have amended the wording of conditions suggested by the Council in the interests of clarity.

### Conclusion

16. For the above reasons and taking into account all other matters raised I conclude that the appeal should succeed.

*Andrew Steen*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PA/14/161.01B, PA/14/161.02B, PA/14/161.03B, PA/14/161.04B and PA/14/161.05B.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Appeal Decision APP/V2255/W/15/3133632

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- 4) 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 and these works shall be carried out as approved. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure; hard surfacing materials; and an implementation programme.
- 5) 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 with the local planning authority.
- 6) Upon completion of the approved landscaping scheme, any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The car spaces to be provided shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.
- 8) The side facing openings of the dwellings hereby permitted shall be obscure glazed and non-opening unless the opening section is more than 1.7m above the floor level of the room it serves, prior to the first occupation of the development and shall remain so in perpetuity.
- 9) The first floor side window to Laburnum Villa hereby permitted shall be constructed prior to the commencement of development of the four dwellings hereby permitted.
- 10) All tree works shall be undertaken in strict accordance with the recommendations detailed within the tree ventures report (ref: P479AIA, dated 13th May 2014) and tree protection and planting details submitted on the tree protection plan (ref: R479TPP).
- 11) The development shall proceed in accordance with the recommendations set out in sections 8.1 and 8.2 of the submitted Reptile Survey by Calumma Ecological Services dated 16/9/14, and the recommendations set out in section 6 of the Preliminary Ecological Appraisal by Calumma Ecological Services dated 13/11/14.





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## Appeal Decision

Site visit made on 26 January 2016

by **Andrew Steen BA(Hons) DipTP MRTPI**

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

Decision date: 10 March 2016

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**Appeal Ref: APP/V2255/W/15/3133029**

**Land adjacent to Rushett Bungalow, Rushett Lane, Norton, Faversham  
ME13 0SG**

- 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 D Petherick against the decision of Swale Borough Council.
  - The application Ref 14/502507/FULL, dated 25 July 2014, was refused by notice dated 2 March 2015.
  - The development proposed is the change of use from stables to office and workshop B1 use.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use from stables to office and workshop B1 use at land adjacent to Rushett Bungalow, Rushett Lane, Norton, Faversham ME13 0SG in accordance with the terms of the application, Ref 14/502507/FULL, dated 25 July 2014, subject to the 8 conditions listed in the schedule at the end of this decision.

### Preliminary Matters

2. I understand that the use of the stables as office and workshop has begun, albeit that further works are proposed to the buildings to support the business use. Information in support of the appeal suggests that the use of the building may have become lawful through the passage of time. However, it is not for me, under a section 78 appeal, to determine whether or not that use has subsisted since 2004. It is open to the appellant to apply to the Council for a separate determination under sections 191/192 of the Act regardless of the outcome of the appeal.
3. I note that there is a long history of planning applications and enforcement investigations on this site, including field shelters in the adjacent field. However, these matters are not the subject of this appeal and the appeal must be determined on its own merits.

### Main Issues

4. The main issues in this case are the effect of the proposed development on the character and appearance of the rural area with particular regard to the activity taking place and the proposed alterations to the building; and suitability of access.
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Appeal Decision APP/V2255/W/15/3133029

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### Reasons

5. The proposed development includes works to the building comprising a pitched roof over the existing flat roof and insertion of a number of windows and doors. The revised roof would not have a harmful impact on the character and appearance of this rural area as it reflects the design of the remainder of the building and is a typical feature of rural buildings. Whilst the building is enlarged by that roof, it would not substantially increase the built form on the site.
6. The proposed windows are modest in size and utilitarian in design and, where possible, would be inserted in or enlarge existing openings. Views of the rear of the building, where most of the new openings are located, are blocked by the existing tall hedge on the site boundary.
7. As such, the proposed alterations would not cause harm to the character and appearance of the rural area.
8. The lane and access to the site are narrow and vehicles associated with the use of the building supporting other rural businesses can be large. Given this is a rural area, it is likely that large agricultural machinery and vehicles regularly use the surrounding road network, including Rushett Lane, such that the limited amount of traffic visiting this site does not materially add to the amount of traffic using the lane. In addition, no evidence has been submitted to demonstrate that the use of this access leads to adverse impacts on highway safety.
9. The size and nature of the building suggests that there is limited employment within the building such that the amount of traffic accessing the site is limited. This needs to be balanced against the location some distance from services and public transport links. Given the nature and scale of the business use in supporting other rural businesses, I conclude that the use does not lead to unsustainable transport patterns.
10. The National Planning Policy Framework (the Framework) sets out a presumption in favour of sustainable development, defined as development in accordance with the Framework as a whole. Sustainable development has three dimensions that must be considered together, being economic, social and environmental.
11. The Framework supports the sustainable growth and expansion of businesses in rural areas, including through conversion of existing buildings. Policy E6 of the Swale Borough Local Plan (LP) reflects that, subject to more detailed criteria in Policy RC1 that seeks to revitalise the rural economy where the development is in scale with its locality and would not detract from landscape interest, character or appearance and avoids unsustainable transport patterns.
12. In conclusion therefore, the business use provides social and economic benefits in providing jobs and services in the rural economy. The location of the development is away from services and facilities, but given the scale of the business use this does not significantly and demonstrably outweigh the benefits of the development, such that it accords with the principles of sustainable development outlined in the Framework. On that basis, the development would protect the countryside, would not cause material harm to the character

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and appearance of the rural area and would provide suitable access, complying with the Framework and Policies E6 and RC1 of the LP.

#### **Conditions**

13. As the change of use of the building forming part of the development proposed has begun, no implementation condition is required. A condition listing the approved plans is required for the avoidance of doubt and in the interests of proper planning.
14. The purpose of condition 2 is to require the appellant to comply with a strict timetable for dealing with materials, landscaping and loading, off-loading and parking, which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
15. A condition is required for details of materials for the new roof to be submitted to ensure that they would maintain the character and appearance of the existing building and surrounding area. There are no other changes to the building for which details of materials are necessary. Details of landscaping works, including details of hard surfacing and means of enclosure, are also required by condition in order to ensure the development will reflect the character and appearance of the area and conditions are required to ensure these are maintained in the future. Conditions are required to restrict the hours of work to protect the living conditions of neighbour occupiers and storage of materials outside should be restricted to protect the character and appearance of the area. A condition is required for the weatherboarding to be stained black to ensure the building reflects the character and appearance of the rural area.

#### **Conclusion**

16. For the above reasons and taking into account all other matters raised I conclude that the appeal should succeed.

*Andrew Steen*

INSPECTOR

#### **Schedule of 8 Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: PE/13/145.01, PE/13/145.02, PE/13/145.03, PE/13/145.04.
- 2) Unless within three months of the date of this decision details of materials for the proposed roof, a scheme for the hard and soft landscaping and full details of areas for loading, off-loading and parking spaces is submitted in writing to the local planning authority for approval,

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and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as these details and scheme are approved and implemented.

If no details or scheme in accordance with this condition is approved within six months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Development shall be carried out in accordance with the approved details and scheme.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Hard and soft landscape works submitted in accordance with the above condition shall include existing trees, shrubs and other features, planting schedules of plants, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.
- 4) 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.
- 5) Once approved the loading, off-loading and parking spaces shall be used for or be available for such use at all times when the premises are in use and no development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on that area of land or in such a position as to preclude vehicular access to this reserved area; such land and access thereto shall be provided prior to the commencement of the use hereby permitted.
- 6) The use shall not take place other than between the hours of: -  
0700-1900 Mondays - Fridays  
0700-1200 Saturdays  
and shall not take place at any time on Sundays or Bank Holidays.
- 7) No external storage of parts, equipment, raw materials or products shall take place within the site.
- 8) The weatherboarding to the development hereby permitted shall be featheredged timber weatherboarding and shall be stained black.




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## Appeal Decision

Site visit made on 11 February 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 11 March 2016

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**Appeal Ref: APP/V2255/C/15/3124762**

**Land adjoining slip road at Thanet Way off High Street Road, Hernhill, Faversham, Kent, ME13 9EN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by P & S Properties (South East) Ltd against an enforcement notice issued by Swale Borough Council.
- The Council's reference is JM/14/500654/OPDEV.
- The notice was issued on 3 June 2015.
- The breach of planning control as alleged in the notice is "Without planning permission the permanent stationing of a Snack Wagon with extended lean-to".
- The requirements of the notice are:
  - i. Cease using the Land for the stationing of a Snack Wagon with extended lean-to;
  - ii. Remove the Snack Wagon and extended lean-to from the land;
  - iii. Remove any debris associated with complying with (ii) above from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

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

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### Application for costs

1. An application for costs was made by the appellant against Swale Borough Council. This application is the subject of a separate Decision.

### The Notice

2. The alleged breach is described as a snack wagon with an extended lean-to (singular). From my observations from High Street Road it appears that there are a number of 'lean-tos' constructed from timber boards and plastic sheeting that are attached to a site container and a vehicle trailer which together make up what I take from a sign board to be the "Pit Stop Café". It seems there is no doubt as to what the notice is targeting but I am required to ensure that it is clear on its face and consider that some correction to the wording of the allegation and the consequent requirements is appropriate to achieve this end having regard to the powers conveyed to me by s176(1) of the 1990 Act. I consider that the development would be more accurately described as "Without planning permission the permanent stationing of a Snack Café and attached 'lean-tos' on the Land". The requirements should then be corrected to accord with these changes. I consider that these corrections would cause no injustice to the parties and would clarify more accurately the nature of the development.

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Appeal Decision: APP/V2255/C/15/3124762

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### Ground (f)

3. The argument put forward on this ground for the appellant on the appeal form is that a retrospective application could have been made to retain the existing café with associated 'lean-tos'. However not only has no such application been made, as far as I am aware, but also there is no ground (a) appeal or deemed planning application to consider under this appeal. The appellant had the opportunity of pursuing an appeal on this basis but has failed to do so. It is argued that an appeal could not be made on ground (a) as the alleged breach is not the same as the proposed application (15/505213/FULL) for the redevelopment of all the land targeted by the notice as a truckstop and transport café with car park. This is an erroneous claim as there was nothing to prevent the appellant pursuing a ground (a) appeal in respect of what presently exists. Consequently the merits or otherwise of the unauthorised development are not before me for consideration. The courts have made it clear that an appeal on ground (f) is not a 'backdoor' means of obtaining planning permission for a breach of planning control as ground (a) specifically exists in the legislation for this purpose.
4. The only question to answer under ground (f) is whether the steps required by the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The agent says that the appellant has agreed to cease the use of the present café and it was not trading when I visited. He then asserts that a lesser step would be to allow the development to remain until such time as the application for the new café and truckstop has been determined.
5. I am not aware of the present situation with this application or whether it has been determined or is still outstanding. Nevertheless, this is a separate matter which does not mean that the requirements of the present notice are excessive. If permission has not or is not granted for this development it does not assist the appellant's case on ground (f) as there would be no permission for any café use on the land. If it is permitted then from the plans and documents before me it would lead to the demolition and replacement of the current café structure with a new purpose-built building. In these circumstances it is illogical to argue that requiring the removal of the present structure is excessive as it seems to be the intention of the appellant (who was also the named applicant for the redevelopment scheme (15/505213/FULL) given on the Planning and Access Statement).
6. Coming back to what presently exists it does not benefit from planning permission in any respect and the Council set out in their reasons for issuing the notice why they consider it causes injury to amenity and is contrary to development plan and national planning policy. In this context and in the absence of any alternative requirements which would address these objections I do not consider it is excessive to require both the use to cease and the existing café structure to be removed. Should planning permission be granted for 15/505213/FULL then the café use would be permitted on the basis of that comprehensive scheme and having regard to s180 of the Act the restriction on the use of the land for this purpose would cease to have effect in so far as it is inconsistent with that permission. For these reasons there is no success on ground (f).

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Appeal Decision: APP/V2255/C/15/3124762

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### Ground (g)

7. There seems to be a degree of overlap between the case made on ground (g) and ground (f) as once more the argument appears to be predicated on the Council determining application 15/505213/FULL. It is asserted that because of the delay in this happening and the absence of a decision – which the appellant would apparently appeal if refused – the compliance period should be extended from 3 months to preferably 12 months and as a minimum 6 months. This again is an attempt to retain what is unauthorised on the basis of a separate proposal which may or may not receive planning permission. I find this to be a flawed premise for the reason explained above that even if permission is granted it will be a new development and will replace what exists. It therefore provides no sound basis for extending the compliance period.
8. The actual point to consider is whether it is reasonable to expect compliance with the requirements within 3 months. In terms of the first requirement the agent says that the appellant has already agreed to cease the use and from my own observations this already appears to be the case so it is not in dispute. As far as the second and third requirements are concerned I consider that 3 months is a period of sufficient length to enable the structure to be dismantled and/or removed from the land along with any associated debris. Consequently there is no success on ground (g).

### Conclusion

9. For the reasons given above I conclude that the appeal should not succeed on either of the grounds advanced. I shall uphold the enforcement notice with corrections as outlined in paragraph 2 above.

### Formal Decision

10. The enforcement notice is corrected as follows:

The wording in Paragraph 3 (THE BREACH OF PLANNING CONTROL ALLEGED) is deleted and replaced with the words "Without planning permission the permanent stationing of a Snack Café and attached 'lean-tos' on the Land"

The wording of requirements (i) and (ii) in Paragraph 5 (WHAT YOU ARE REQUIRED TO DO) is deleted and replaced with:

- (i) Cease using the Land for the stationing of a Snack Café with attached 'lean-tos';
- (ii) Remove the Snack Café and attached 'lean-tos' from the land;

11. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

*N P Freeman*

INSPECTOR



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## Costs Decision

Site visit made on 11 February 2016

by **Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

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

Decision date: 11 March 2016

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**Costs application in relation to Appeal Ref: APP/V2255/C/15/3124762  
Land adjoining slip road at Thanet Way off High Street Road, Hernhill,  
Faversham, Kent, ME13 9EN**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by P & S Properties (South East) Ltd for a full award of costs against Swale Borough Council.
  - The appeal was against an enforcement notice alleging without planning permission the permanent stationing of a Snack Wagon with extended lean-to.
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### Reasons

1. I have considered the application in the light of the advice contained in the Government's Planning Practice Guidance (PPG) on such matters. This advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

### *Submissions for the appellant*

2. The Council first issued a notice which related to the wrong area of land to the north of Thanet Way. The appellant drew this to the Council's attention inviting them to withdraw the notice and not re-issue it as the appellant was intending to submit an application for the redevelopment of the land in question as a roadside café and lorry parking compound (Ref: 15/5052123/FULL). Despite this request the Council went ahead with serving a second notice in respect of the correct area of land which was then appealed.
3. Once the appeal was registered, the Council failed to submit the required questionnaire by the deadline date and did not send out the third party consultation letter until 5 October 2015. They also have not provided any written statement setting out their case. These procedural failings amount to unreasonable behaviour on the part of the local planning authority and have led to the appellant incurring unnecessary expense in having to pursue this appeal. If the Council had not served the second notice and dealt with the planning application instead there would have been no need for the appeal and the costs incurred could have been saved.

### *Response for the Council*

4. None

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Costs Decision: APP/V2255/C/15/3124762

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***Inspector's conclusions***

5. It is evident that once the Council were made aware that the first enforcement notice was issued in respect of the wrong area of land they withdrew it before issuing the second notice in relation to the correct parcel of land. This indicates responsible behaviour on the part of the Council. As to the service of the second notice the Council were within their rights to proceed and they were not obliged to agree to the appellant's request not to do so pending a decision on the redevelopment application. These are two separate forms of development and the reasons given for issuing the notice explain why the Council considered it was expedient to do so. Consequently, their actions in this respect did not constitute unreasonable behaviour.
6. As to the procedural points regarding the supplying of the questionnaire and sending out of the consultation letter I accept that the Council were tardy in doing so and failed to meet the required deadlines. Nevertheless they eventually did so and the appellant has had the opportunity to comment and has not been prejudiced by the late submission. As to the lack of statement from the Council, whilst some further explanation would have assisted, they were not required to provide a statement.
7. Even if the actions of the Council were considered to contain some elements of unreasonable behaviour the other criterion to be met for an award of costs to be made is that the appellant has incurred unnecessary or wasted expense in pursuing this appeal. I do not consider that this is the case as the costs incurred are those that would have arisen even if the questionnaire and consultation letter had been sent on time. I have already addressed the point that it was not unreasonable for the Council to proceed to issue a second notice and the outcome of the application for the redevelopment of land is a separate matter which did not need to be resolved before the notice was issued.
8. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Government's Planning Practice Guidance (PPG), has not been demonstrated.

**Decision**

9. The application for an award of costs is refused.

*N P Freeman*

INSPECTOR

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## Appeal Decisions

Site visit made on 11 February 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 17 March 2016

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### Appeal A: APP/V2255/C/15/3127953

#### 11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX

- 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 Michael Crossman against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/EAC/14/002.
- The notice was issued on 10 June 2015.
- The breach of planning control as alleged in the notice is "Without planning permission the construction in red brick, topped with white coping stones, of small retaining walls, and retaining walls used to create two planting areas within the front garden of the site, the heights of which range from 180mm to 780mm the approximate positions of which are highlighted in yellow on the plan".
- The requirements of the notice are:
  - i. Demolish and remove the retaining walls highlighted in yellow on the plan;
  - ii. Demolish and remove the retaining walls used to create the two new planting areas highlighted in yellow on the plan;
  - iii. Remove any materials or debris etc from the Land caused in complying with the requirements of Sub paragraph 5.(i) and (ii) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### Appeal B: APP/V2255/W/15/3062096

#### 11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX

- 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 Michael Crossman against the decision of Swale Borough Council.
- The application Ref. 14/503145/FULL, dated 27 September 2014, was refused by notice dated 28 May 2015.
- The development proposed is small retaining walls for brick planters to front garden - two areas.

**Summary of Decision: The appeal is allowed, and planning permission granted.**

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Appeal Decisions: APP/V2255/C/15/3127953 & APP/V2255/W/15/3062096

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### **Applications for costs**

1. Applications for costs were made by appellant against the Council in respect of both appeals. These applications are the subject of a separate Decision.

### **Main Issue**

2. Although there are two separate appeals they essentially relate to the same matter. That is whether planning permission should be granted for the development that has taken place. The main issue to consider is the impact of the development on the character and appearance of this residential area and the streetscene.

### **Reasons**

3. The development comprises low retaining walls some of which provide planters which contain a range of vegetation and others which enclose some steps up to the front of the property. The walls are constructed in red brick, which is the predominant facing material used in the facades of the houses which comprise the Kingsborough Manor Estate, topped with stone copings. One of the planter sides facing the road has what I take to be the name of the property ("Chayleigh") etched into a piece of stone.
4. I note the objections of some residents and the Council that the development at the front of the property is incongruous and out of keeping. In this respect I am also aware that the planning officer who dealt with the application took a different view finding that "The proposal would not result in harm to residential amenity because it is small scale and would not enclose neighbouring properties to any significant degree". The recommendation was to grant planning permission but the Planning Committee members took a different view and refused the planning application for the reasons given in the decision.
5. For my part I am in agreement with the original views of the planning officer. The walls and copings are attractively designed in materials which complement the housing round about. Although at the front of the property they are relatively low features which I do not find to be intrusive in the street scene. The vegetation that has been introduced into the planters provides verdure which softens the impact of the masonry and overall the development is not out of keeping or detrimental to the character or appearance of this modern housing estate.
6. In reaching this view I observed that there are places nearby where fences and walls abut the pavement edge and these are around 2m high which is considerably higher than the walls in question. I accept that most of the front gardens are open but nevertheless a number contain garden ornaments, seats and other features, including a sizeable boat in the front garden of the property close to the junction with Eastchurch Road. There are also substantial areas of planting in the front gardens. In this context I do not consider that the sensitively designed low planters and walls are out of place or that they cause any material harm to the openness of the estate.
7. I have take account of the comments from objectors which I have borne in mind. The points regarding restrictive covenants are not matters before me or material planning considerations but those which are subject to separate legislation, should such covenants exist and have effect.

Appeal Decisions: APP/V2255/C/15/3127953 & APP/V2255/W/15/3062096

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8. I have had regard to the policy context, in particular Policies E1 and E19 of the Swale Borough Local Plan 2008 to which the Council refer. There is some criticism from the appellant's agent concerning the age of these policies but as far as I am aware they remain as 'saved' policies pending the production of a new Local Plan. Moreover, for the reasons given above I consider that there is no conflict with the terms of these policies or indeed any aspect of the National Planning Policy Framework.
9. In conclusion I find that the development has not had a harmful impact on the character and appearance of this residential area or the streetscene. Consequently the appeals succeed on ground (a) and in terms of the s78 appeal and planning permission will be granted. The Council have not requested any conditions and I consider that none are necessary.

**Formal Decisions:**

**Appeal A: APP/V2255/C/15/3127953**

10. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction in red brick, topped with white coping stones, of small retaining walls, and retaining walls used to create two planting areas within the front garden, the heights of which range from 180mm to 780mm, on land at 11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX.

**Appeal B: APP/V2255/W/15/3062096**

11. The appeal is allowed and planning permission is granted for small retaining walls for brick planters to front garden - two areas - at 11 Hustlings Drive, Eastchurch, Sheerness, Kent, ME12 4JX in accordance with the terms of the application, Ref. 14/503145/FULL, dated 27 September 2014, and the plans submitted therewith.

*N P Freeman*

INSPECTOR




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## Costs Decision

Site visit made on 11 February 2016

**by Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

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

Decision date: 17 March 2016

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**Costs applications in relation to Appeal Refs: APP/V2255/C/15/3127953 & APP/V2255/W/15/3062096**

**11 Hustlings Drive, Eastchurch, Kent, ME12 4JX**

- The applications are made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The applications are made by Mr Michael Crossman for a full award of costs against Swale Borough Council in respect of the two appeals.
  - The appeals were against an enforcement notice alleging the construction of retaining walls in the front garden and the refusal of planning permission for the same.
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### Reasons

1. I have considered the application in the light of the advice contained in the Government's Planning Practice Guidance (PPG) on such matters. This advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

### *Submissions for the appellant*

2. The Council should have delayed the issuing of an enforcement notice pending the outcome of the appeal relating to the refusal of planning permission. It was neither proportionate nor expedient to take enforcement action as permission may have been granted. To do so was contrary to the advice in paragraph 207 of the National Planning Policy Framework (NPPF) and put the appellant to extra expense over and above that incurred in pursuing the s78 appeal, which could have been avoided. The Council's argument that there was no need to appeal the enforcement notice is flawed as this was necessary to avoid the notice taking effect prior to the planning appeal being determined. Based on earlier submissions to the Council to this effect they were given the opportunity to withdraw the notice but failed to do so.
3. In terms of the decision of the Council to refuse planning permission they were entitled to do so, notwithstanding the recommendation of their officers to grant planning permission. However in doing so they are required to produce convincing and substantive reasons to show why they departed from their professional advisers' recommendation. They did not do so and the minutes of the Committee meeting only contain bland generalisations rather than substantive reasons for finding the development to be unacceptable. Hence they failed to properly discharge their responsibility in reaching their decision.

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[www.planningportal.gov.uk/planninginspectorate](http://www.planningportal.gov.uk/planninginspectorate)

Costs Decision: APP/V2255/C/15/3127953

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### ***Response for the Council***

4. The Council acted reasonably in issuing the enforcement notice following the refusal of planning permission and the submission of the planning appeal was not a sound reason for delay. The expectation of members is that enforcement action will be taken in good time. The enforcement appeal simply duplicates the s78 appeal and no other grounds under s174 are advanced. It was therefore unnecessary to lodge the enforcement appeal as the matters in question were the same with no new issues for consideration. Moreover if planning permission is granted the effect of the notice would be nullified. On the planning appeal the reasons why the Council decided to refuse the application despite the recommendation of officers is set out in the decision notice and expanded upon in the Council's statement on both appeals.

### ***Inspector's reasoning***

5. In terms of the issuing of the enforcement notice I have had regard to the advice in paragraph 207 of the NPPF. I consider that the appellant's agent is putting gloss on what it actually says. The first point is that effective enforcement action is important if public confidence in the planning system is to be maintained. So once the Council had decided to refuse planning permission they were not required to delay enforcement action until the s78 appeal was determined. Discretion and proportionality need to be followed but in this instance I find that taking enforcement action was not disproportionate as it has enabled the two appeals to be linked and determined at the same time. As the Council point out no additional issues are raised by the s174 appeal as it is only pursued on ground (a). Delaying the service of the notice could have resulted in another later appeal which would simply have dragged out the proceedings which I consider would not help in developing public confidence in the planning system.
6. Based on my decision on the s78 appeal, permission is granted for the development and, having regard to the powers conveyed by s180 of the Act the enforcement notice would have ceased to have effect in so far as it is inconsistent with the planning permission now granted even if no s174 appeal had been lodged. So it was not strictly necessary to pursue the enforcement appeal as no other grounds other than (a) were argued. For this reason the agent's argument about needing to appeal to avoid the notice taking effect is misguided.
7. On the matter of the planning appeal, I appreciate that the reporting officer argued in favour of granting permission for the application. Nevertheless, this is not an instance where the Council have failed to substantiate the reasons for their decision. Whilst I have not agreed with their reasoning I consider that some reasonable explanation was provided in their written statement sufficient to discharge their responsibilities. I therefore find that unreasonable behaviour resulting in unnecessary expense has not been demonstrated.

### **Decision**

8. The applications for awards of costs in respect of both appeals are refused.

*N P Freeman*

INSPECTOR

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