

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 26 May 2016

Time: 7.00 pm

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

Membership:

To be confirmed following Annual Council 18 May 2016

Quorum = 6

Pages

1. Fire Evacuation Procedure

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.

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.

The Chairman will inform the meeting that:

(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

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

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.

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the Minutes of the Meeting held on 28 April 2016 (Minute

Nos. 648 - 655) as a correct record.

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.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

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 16 May 2016 (Minute Nos. to follow).

2.2 15/508144/FULL 6 Sheerstone, Iwade, Kent, ME9 8RN

6. Deferred Item

1 - 61

To consider the following application:

15/510595/OUT, Land off London Road, Newington.

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

Requests to speak on these items must be registered with Democratic Services (democraticservices@swale.gov.uk or call us on 01795 417328) by noon on Wednesday 25 May 2016.

7. Report of the Head of Planning

62 - 186

To consider the attached report (Parts 1, 2, 3 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on Wednesday 25 May 2016.

8. 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.

9. Report of the Head of Planning

To consider the attached report (Part 6).

Issued on Tuesday, 17 May 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

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

PLANNING COMMITTEE – 26 MAY 2016

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 REFERENCE NO – 15/510595/OUT

APPLICATION PROPOSAL

Outline application with all matters reserved (except for the details of a vehicular access point from London Road, including the widening and realignment of the A2) for residential development of up to 126 dwellings (including 30% Affordable), plus 60 units of Extra Care (Use Class C2), an allocated 1/4 acre of serviced land for potential doctors surgery, planting and landscaping, informal open space, children's play area, surface water attenuation, and associated ancillary works (Resubmission of 15/500671/OUT).

ADDRESS Land Off London Road Newington Kent

RECOMMENDATION This application is the subject of an appeal against non-determination. As such this application will not be determined by Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision. If the application had not been subject to an appeal, the recommendation would have been to grant permission subject to a suitably worded Section 106 Agreement and appropriate planning conditions.

SUMMARY OF REASONS FOR RECOMMENDATION

Whilst the proposal is contrary to the adopted and emerging Local Plans, the Council's policies regarding the provision of housing are considered out-of-date because the Council cannot demonstrate a 5 year supply of housing land as set out in paragraph 49 of the NPPF. Therefore, the application must be considered in the context of the presumption in favour of sustainable development as required by paragraph 14 of the NPPF, and whilst finely balanced, the benefits of the proposal outweigh the costs to a degree that the proposal constitutes sustainable development and in the absence of material considerations that indicate otherwise, planning permission should be granted in my opinion.

REASON FOR REFERRAL TO COMMITTEE

Deferred from 28th April 2016 planning committee. The significant amount of objection including from residents, Parish Councils, Ward Member and MP, and so that Planning Committee can determine this significant controversial application.

WARD Hartlip, Newington & Upchurch	PARISH/TOWN Newington	COUNCIL	APPLICANT Gladman Developments
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DECISION DUE DATE 8/4/16	PUBLICITY EXPIRY DATE 25/4/16	OFFICER SITE VISIT DATE 28/1/16
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RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):

App No	Proposal	Decision	Date
15/500671/OUT	Outline application for residential development of up to 330 dwellings plus 60 units of extra care (including a minimum of 30% affordable), an allocated 1/4 acre of serviced land for potential doctors surgery, demolition of farm	Appeal against non-determination with	

	outbuilding, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works. (Access being sought)	Public Inquiry scheduled for June 2016.	
15/500694/LBC	Listed Building Consent for the demolition of redundant farm outbuildings to the listed Pond Farm, in association with outline application for residential development covered under 15/500671/OUT	Refused	8/5/15
SW/95/0714	Conversion of agricultural buildings into 3 residential units	Withdrawn	

MAIN REPORT

1.0 BACKGROUND

1.01 Members will recall this application from the 28th April 2016 Planning Committee, where it was deferred to the next meeting of the Planning Committee so that the Head of Planning could advise Members of the prospects of such a decision if challenged on appeal and if it becomes the subject of costs.

1.02 The (draft) minutes of the meeting (appended) state:
“Councillor Mike Henderson proposed the following reasons for refusing the application if the motion to approve were to be lost;

- *In principle the application is over-intensive for Newington and an expansion of 20% to the size of the village is not sustainable;*
- *Loss of potential brick earth resource;*
- *The increase in traffic would increase pollution and impact on the AQMA;*
- *Loss of high quality agricultural land;*
- *Not economically sustainable;*
- *Not environmentally sustainable. The Council’s Environmental Protection Officer has concerns;*
- *Socially unsustainable;*
- *Contrary to Policies E1, E6, E7 and E12 of the adopted Local Plan;*
- *Loss of listed building and heritage assets;*
- *Inadequate Travel Plan.”*

1.03 Amongst the extensive minutes to the meeting other issues that need to be addressed include;

- To consider the outcomes of the emerging Local Plan and KCC Waste and Minerals Plan.
- Lights from vehicles leaving the site will have an adverse impact on London Road properties.
- The Council’s landscape and visual consultants recommendation for refusal has been ignored by officers.
- Need to consider cumulative impacts of development.
- No section 106 monies for local schools or recreation area.
- Traffic assessment not carried out correctly/ vehicle movements would double.
- Does not comply with the NPPF.

- Does not improve the quality of the village.
- Contrary to the emerging local plan.
- KCC Waste and Minerals Plan states that a 25 year supply of brick earth is essential and this type of development is fundamental to promoting brick earth reserves to be used.
- Bullet point 5 of para 17 of the NPPF does apply and there is case law to support this.
- Council's Climate Change Officer has concerns- why have these been ignored?
- Developer trying to blackmail Council by stating if current application is approved the larger appeal proposal will not be pursued.
- The third traffic lane should be removed as it will cause problems.
- S106 monies should be used for Church Road Newington not Key Street roundabout.

1.04 An appeal against non-determination of the application has been lodged by the applicants. As a result it is important for Members of the Committee to pass a resolution as to whether they would have approved or refused the application if the application was within the jurisdiction of the Council to determine.

1.05 The Planning Inspectorate has agreed that the appeal should be combined with the appeal into the larger scheme, and the date for the joint inquiry has therefore been postponed from 20th June 2016. The Council will need to produce its Statement of Case shortly. It should be noted that, despite their indications that they intended to withdraw the appeal on the larger scheme if planning permission had been granted for this application, Gladman Developments Ltd are still pursuing both appeals.

1.06 I attach original officer report to which this report should be read jointly.

2.0 POLICY AND OTHER CONSIDERATIONS

2.01 The policy context was fully detailed in section 5 of the original report which is appended.

2.02 The presumption in favour of sustainable development set out in NPPF para 14 applies. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”, when assessed against the policies in the NPPF taken as a whole. As para 49 states:

“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.”

2.03 The Court of Appeal has considered Para 49 recently in Suffolk Coastal District Council and Richborough Estates Partnerships LLP [2016] EWCA Civ 168. The Court decided that the reference to “relevant policies for the supply of housing” must be given a wide meaning, so that any policy that constrains housing land supply is affected. The Courts decision states:

“33. Our interpretation of the policy does not confine the concept of “policies for the supply of housing” merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or

the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it—that policies of both kinds make the supply what it is.”

- 2.04 Whether a particular policy of the plan, properly understood, is a relevant policy "for the supply of housing" is a question for the decision-maker. But the Court went on to emphasise that these policies remain material considerations, in that:

“46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ...”

“47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy - such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment ...”

- 2.05 The effect of this was recently considered in the appeal decision regarding Norton Ash Garden Centre, London Road, Norton (APP/V2255/W/15/3135521), dated 4 May 2016. As the Inspector concluded on the development plan and housing land supply (at his paras 5 to 19) moderate weight can still be attached to the development plan policies to the location of development and the settlement strategy. Limited weight was attached to the countryside protection policies in that case, whereas the policies on the sustainability of the location should still be accorded significant weight. The weight that can still be attached to each of the development plan policies for this application is discussed in the report.
- 2.06 Amongst the other concerns raised by Members are that the outcome of the emerging Local Plan should be considered. At the moment, the Council does not have a 5 year supply of housing land. By the date of tonight's planning committee, the additional housing sites may have been determined by the LDF panel on the 19th May. This is good evidence to show that the Council is taking steps to identify a 5 year supply, but

these sites will not have been subject to public consultation and the level of unresolved objection to the additional sites will not be known at this time. This uncertain 5 year supply position means that it would be wrong for Members to make a recommendation on the basis that the Council does have a secure 5 year supply of housing land, but the advanced stage of the Local Plan process means that more weight can be attached to the out-of-date development plan policies than otherwise would be the case (as shown in the Norton Ash Garden Centre appeal decision).

Kent Minerals and Waste Plan

- 2.07 In addition to this, the minerals and waste plan has advanced further. On 27th April 2016 the Planning Inspectorate issued its report on the examination into the Kent Minerals and Waste Local Plan 2013-2030. It concludes that with modifications the document is sound and is capable of adoption.
- 2.08 The relevant policy in relation to this application is on brickearth. In summary, the policy on this has been modified, so that there is a degree of flexibility allowed where the material considerations indicate that the need for the development overrides the presumption for safeguarding the mineral. Amongst other things, the minerals and waste plan states;

52. KCC’s approach to the provision of industrial minerals reflects the guidance of the NPPF to provide a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant and the maintenance and improvement of existing plant and equipment: at least 10 years for individual silica sand sites; at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.”

“Brickearth & clay for brick and tile manufacture

63. Brickearth is widespread in Kent; and the stock of existing planning permissions is sufficient for the Plan period to support the few brick and tile manufacturers in Kent together with one brickworks in East Sussex. There is also sufficient clay available should any of the dormant brick and tile works reopen. However, there will be a need to identify further supplies of brickearth through the MSP in order to maintain the required landbanks.”

“146. The NPPF says that MSAs should be defined in relation to known locations of specific minerals resources of local and national importance so that they are not needlessly sterilised by non-mineral development. I appreciate that some minerals for which there is a limited identified demand – for example brickearth – are abundant or widespread in Kent. There is an argument for not including locations of these minerals in an MSA. But, as the MSEGPA states, the use of information from BGS resource maps largely eliminates the need for MPAs to make their own judgments on which mineral deposits are or may become of potential economic interest. MSAs should usually cover the whole resource.

147. Brickearth is not a mineral identified in the NPPF as requiring a stock of permitted reserves to be provided. However, it is analogous to brick clay, for which 25 years reserves are required to be maintained. It is reasonable that the same landbank should be maintained for brickearth. I appreciate that at present brickearth sourced from Kent is used for just 2 brickworks. But over the Plan

period and beyond it is possible that demand could increase. In that context, I do not consider it unreasonable for the Plan to safeguard brickearth. The Plan is not unsound in that regard.”

“149. Notwithstanding the limited opportunities to extract mineral in a wholly or mainly built-up area, the advice is that MSAs should usually be defined in such areas to highlight (for example) the potential for extracting minerals beneath regeneration projects and brownfield sites. It also reduces the need to alter the boundaries to take account of urban expansion. The inclusion of developed areas into MSAs / MCAs is therefore not unsound. However, I appreciate that their inclusion could present District Councils and potential developers with a significant administrative and financial burden. Therefore in the interests of practicality KCC has chosen to modify the originally proposed MSAs largely to exclude urban / built up areas. I consider this to be a matter of balance, but I am content for them to be redefined in this way for each individual District. Although contrary to the advice of MSEGPA, it is not contrary to national policy as set out in the NPPF.”

2.09 At Policy DM7 the Inspector states;

“A new exemption (5) is added to cover the situation where material considerations indicate that the need for the development overrides the presumption for safeguarding. That allows a degree of flexibility to take account of other priorities. I agree with the Council that it is appropriate nonetheless that opportunities for prior extraction of minerals should be explored. This is not inconsistent. Indeed, to do otherwise could undermine the purpose of the relevant policy (Policy DM 8 as submitted / DM 9 as proposed to be modified).”

“158. Overall, I take the view that these modifications largely overcome the concerns of a number of District Councils that the policy as submitted could frustrate adopted development plan policies. They would also allow flexible judgments to be made, balancing the merits of development proposals with the desirability of safeguarding minerals for future generations.”

“163. Overall, the modifications make Policies CSM 5 and DM 7 comprehensible, flexible and effective. The introduction of minerals assessments will place an onus on developers to provide reasons why the safeguarding should not prevail in any particular circumstance.”

“Extraction of minerals in advance of surface development

“194. The NPPF requires MPAs to set out policies to encourage the prior extraction of minerals where practicable and environmentally feasible, if it is necessary for non-mineral development to take place. This is addressed in the Plan under Policy DM 8.

195. As submitted, the policy says that permission will be granted for “mineral extraction that is in advance of permitted surface development”. But this would not apply to development which incorporated extraction together with surface development. It is too restrictive and thereby ineffective and unsound.

196. The shortcomings may be overcome by a modification to the policy and its supporting text [MM7/3B], the latter explicitly linking the operation of the policy to development proposed in a Minerals Safeguarding Area, and to the Safeguarding Mineral Resources Policy (“new” Policy DM 7) in order to provide context. As part

of the general reorganisation of the policies in the Plan, it is renumbered as Policy DM 9.

197. When read together with the modified supporting text, it is clear that the development being referred to is non-mineral development and that the aim of the policy is to prevent needless sterilisation of resources in line with the NPPF. There is no need to further amend the policy in the interests of soundness.”

2.10 The Inspectors proposed amendments result in DM7: Safeguarding Mineral Resources pre-text including the following considerations. “It is important that certain mineral resources in Kent are safeguarded for potential use by future generations. However, from time to time, proposals to develop areas overlying safeguarded minerals resources for non-minerals purposes will come forward. The need for such developments will be weighed against the need to avoid sterilisation of the underlying mineral and the objectives and policies of the development plan as a whole will need to be considered when determining proposals. Policy DM7 sets out the circumstances when non-minerals development may be acceptable at a location within a Minerals Safeguarding Area. This policy recognises that the aim of safeguarding is to avoid unnecessary sterilisation of resources and encourage prior extraction of the mineral where practicable and viable before non-minerals development occurs.”

2.11 The policy itself states;
 “Policy DM7
 Safeguarding Mineral Resources
 Planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding, where it is demonstrated that either;

1. The mineral is not of economic value or does not exist; or
2. That extraction of the mineral would not be viable or practicable; or
3. The mineral can be extracted satisfactorily, having regard to Policy DM9, prior to the non-minerals development taking place without adversely affecting the viability or deliverability of the non-minerals development;
4. The incompatible development is of a temporary nature that can be completed and the site *returned* to a condition that does not *prevent* mineral extraction within the timescale that the mineral is likely to be needed; or.....
5. Material considerations indicate that the need for the development overrides the presumption for minerals safeguarding such that sterilisation of the minerals can be permitted following the exploration of opportunities for prior extraction.”

2.12 The now renumbered Policy DM9 states;
 “Policy DM9: Extraction of Minerals in Advance of Surface Development
 When development is proposal within an MSA promoters will be encouraged to extract the mineral in advance of the main development. Policy DM9 aims to manage situations where built development located on a safeguarded mineral resource is to be permitted, so as to avoid the needless sterilisation of economic mineral resources (in accordance with Policy DM7).”

3.0 LOCAL REPRESENTATIONS

3.01 One further letter of objection has been received from a local resident which is summarised as follows;

- Earlier reports judgements are negligent and craven.
- Prematurity is a reason for refusal.
- Existing policies should be adhered to.

- Planning should promote sustainable housing and defend communities threatened by opportunistic developers irretrievably destroying greenfield sites and distorting village evolution with out of scale proposals.
- What are we paying Council Tax for if not to have fair and transparent planning?
- Why bother having Councillors who are rendered impotent by officials weak and craven, pronouncements in any decision making?
- Why do officers bother to ask for expert advice then ignore it?
- Ignoring legal obligations on harmful pollution- Council responsibility is very clear in European and National Law. Various areas including Newington have measures harmful exceedances in pollution levels.
- Proposal contrary to NPPF re AQMA. Cumulative impacts of development to be considered and should comply with the requirements for Environmental Impact Assessments.

3.02 No further representations, beyond those in sections 6 and 7 of the first report and the tabled update to Members, have been received since the last meeting.

4.0 CONSULTATIONS

4.01 NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups has provided further justification for its initial request for developer contributions of £360 per resident towards the Meads Medical Practice in Sittingbourne. It also clarified this practice has not benefitted from any previous developer contributions.

4.02 Medway Council confirms it raises no objections subject to the following:

- “A condition securing the submission of an air quality mitigation assessment for approval, that outlines air quality mitigation equivalent to, or greater than, the calculated damage costs;
- If this is not achievable, or there is an underspend, then a contribution should be made to wider air quality mitigation measures, as outlined in Medway Council’s air quality action plan, through a Section 106 agreement.
- Condition(s) securing standard air quality mitigation consisting of electric vehicle charging points and low nox boilers (as per the air quality planning guidance). This is in addition to mitigation outlined in the mitigation statement.
- Mitigation in accordance with the IAQM guidance on the assessment of dust from demolition. This could be conditioned, and incorporated into a specific dust management plan, or a wider construction environmental management plan.”

They also state that “should Swale Borough Council / the Planning Inspectorate, not be able to secure the above mitigation measures by way of legal agreement, under Section 106 of the Town and Country Planning Act 1990 (as amended), or by way of Planning Condition, as may be appropriate, Medway Council would wish to maintain its objection on Air Quality Ground, as previously specified.”

4.03 Natural England has confirmed it has no further comments to make.

4.04 No further representations, beyond those in sections 6 and 7 of the first report and the tabled update to Members, have been received since the last meeting.

5.0 BACKGROUND PAPERS AND PLANS

5.01 See section 8 of the original report (appended).

6.0 APPRAISAL

- 6.01 The original report sets out the main considerations, and the recommendation was that planning permission for this reduced scheme should on balance be granted. The test in NPPF Para 14 applies, in that the adverse impacts of doing so would not significantly and demonstrably outweigh the benefits.
- 6.02 There are a number of further points that were raised at the last committee meeting, which have been considered further. None of these change the overall recommendation made by officers, for the reasons set out below.

Housing Land and the emerging Local Plan / Prematurity

- 6.03 As discussed, the development plan policies relevant to the supply of housing are out-of-date, and only moderate weight can be attached to the locational policies. It is not considered that the grant of this permission would be premature to the adoption of the Local Plan. Some limited weight can be attached to the fact that this site is not one of those that has been identified as suitable for allocation in the emerging Local Plan, but there are many unresolved objections to these draft allocations.
- 6.04 National guidance is clear that prematurity will not normally amount to a reason for refusal. The grant of permission for 126 dwellings at Newington is not considered to prejudice the scale of development. This was previously addressed in the first committee report, including prematurity (see 9.01 or first report).

Air Quality impacts

- 6.05 Members raised concerns that the increase in traffic would increase pollution and impact on the AQMA. It is important that Members note KCC Highways and Transportation, and Highways England raise no objection with regard to the impact on highway safety and convenience. The Council's Environmental Health Manager has explained why he is now satisfied that, subject to the proposed mitigation measures, there will not be an adverse effect on the Newington AQMA (see the original report on air quality, at para 9.20). As Medway Council has mentioned, the impact on the Rainham AQMA can be also made acceptable subject to the measures requested by Medway Council being secured by condition or legal agreement.

Overdevelopment

- 6.06 It is respectfully suggested that the term over-intensive is not a clear reason for recommending that permission would have been refused. It is necessary to identify what harm would arise from this. The percentage increase in the size of Newington as a result of the proposal is a matter of record, but it is important that Members consider the proposal in the context of the development plan and the NPPF as a whole. Whilst the site area and percentage increase may seem significant, there are very limited negative impacts and many more positive impacts.

Safeguarding minerals

- 6.07 The applicant has previously provided further information regarding the practicability and viability (to satisfy the requirements of Policy DM7 of the KCC Waste and Minerals Plan) of prior extraction of potential brick earth which were tabled at the last meeting. It is still an open question whether the brick earth present is a viable source.

- 6.08 Even if the viability and practicability of removing the brick earth was justified, this would result in prolonging the disruption caused by the development of this site and impact on the sites ability to provide housing within the next 5 years. There would be Increased HGV movements to and from the site to remove the material. Reduced levels on site would also result either importing of suitable off-site materials to bring ground levels back to existing or in property slab levels being lower than the surrounding properties (by about 1.5 – 2m depending on amount of extraction) and the potential for retaining structures of similar depths being required immediately adjacent to the boundaries
- 6.09 In light of the Inspectors considerations, my opinion remains that the information provided by the applicant as to the viability and practicability of prior extraction of brick earth does cast doubt on the ability to do so. In accordance with the NPPF, whilst this is a potential economic negative, this is outweighed by the positives including the ability to bring forward housing delivery in the next five years . In particular I would draw Members attention to the plan’s text to policy DM7 which states that “The need for such developments will be weighed against the need to avoid sterilisation of the underlying mineral and the objectives and policies of the development plan as a whole will need to be considered when determining proposals”.

Loss of agricultural land

- 6.10 Members raised concerns about the loss of high quality agricultural land. This was discussed in the original report, where it was acknowledged that this is an adverse consideration. But, as has been stated, this has become a necessary part of the need to identify further housing land. It has already been necessary to release large amounts of agricultural land to meet development needs in the Borough and this is also the case for additional housing sites required under the emerging local plan. Considered in the light of national policy, it is important to point out that para 112 of the NPPF does not rule out the principle of development on BMV land.
- 6.11 The Council does not yet have a policy on safeguarding high quality agricultural land, and the Council’s emerging local plan policy DM31 can only be given limited weight. It does seek to influence the supply of housing land by restricting the locations where new housing may be developed, to areas of low quality agricultural land.

Economic sustainability

- 6.12 Members raised concerns that the proposal is not economically sustainable. The construction phase and longer term employment generation from the extra care facility are economic gains but these are partially offset by the loss of agricultural land and potential mineral reserves (noting doubts have been cast on the viability and practicability of prior extraction) and their attendant economic benefits. As a result, the proposal would result in some economic gains, which demonstrates the proposal would be economically sustainable.

Environmentally sustainability

- 6.13 Members raised concerns that the proposal is not environmentally sustainable. In terms of environmental considerations, the visual and landscape impacts are considered acceptable, but there would be a loss of BMV agricultural land and potential mineral deposits (as noted above doubt has been cast on the viability and practicability of prior extraction). Heritage, transport, air quality and ecological impacts have been demonstrated to be acceptable. Therefore, the proposal would not cause

environmental harm. Reference to the Council's Environmental Health Manager having concerns about air quality, are distinct from him raising objection, which he has not.

Social sustainability

- 6.14 Members raised concerns about the social sustainability of the proposal. The additional dwellings including affordable dwellings and the extra care facility represent social gains. Some limited weight is to be given to the serviced land for a doctors' surgery. In my opinion, the proposal is clearly socially sustainable.

Biodiversity

- 6.15 Members raised concerns that the proposal is contrary to adopted Local Plan Policies E1, E6, E7 and E12. In my opinion, the proposal complies with Policies E1 and E12 as it is in accordance with the general development criteria and would cause no harm to designated biodiversity sites as confirmed by Natural England and as set out in the Habitat Regulations Screening set out in the original report. The proposals non-compliance with policies E6 and E7 is not as straight forward as these policies carry diminished weight because they are considered out of date given that the Council cannot demonstrate a 5 year supply of housing land. Within this context, whilst the proposal is strictly speaking contrary to the wording of policies E6 and E7, the principle of the development should be accepted in my opinion.

Listed building and heritage assets.

- 6.16 Members did raise concerns about the loss of a listed building and heritage assets. It is not proposed to demolish any listed buildings or other heritage assets in this reduced scheme, and the red line would now exclude the outbuildings around Pond Farm. The residual affect on them from the nearby development would be mitigated by the provision of a substantial area of undeveloped land, and would preserve the special character of the heritage assets in accordance with the statutory tests. Therefore this should not form a reason for which the Council would have refused permission.

Travel Plan

- 6.17 The travel plan submitted has been considered adequate and acceptable by both Highways England and KCC Highways and Transportation. Members concerns about the inadequacy of the travel plan should not form a reason for which the Council would have refused permission because ignoring the Council's specialist advisers could be perceived as unreasonable behaviour at the upcoming appeal with subsequent costs awarded against the Council amounting to several thousand pounds for this single issue.

Impact of lights from vehicles

- 6.18 The impact of light from vehicles leaving the site on properties on London Road is not considered to amount to a reason for which the Council would have recommended refusal here given the relatively low level of activity and the significant distance between the dwellings on the northern side of London Road and the road surface.

Cumulative impact of development

- 6.19 Concern was raised about cumulative impact of development. There is no reference to what issues or sites this relates to. Whilst no specific sites have been identified this could reasonably be assumed, in the local area, to be 16/501266/FULL at 99 High Street Newington for 113 dwellings, and 15/509664/OUT at land East of St Mary's view for up to 26 dwellings. Near the Swale Medway boarder there is MC/15/2731 at land north of Moor Street Rainham for 190 dwellings which was refused and is the subject of an appeal, and MC/14/3784 for 200 dwellings at the same site which has an appeal against non-determination. Neither appeal has been determined. Given that none of the above planning applications have yet been approved there is no cumulative impact to assess.

Section 106

- 6.20 At the last meeting it was suggested that there was a lack of section 106 monies for local schools or recreation areas. The S.106 items recommended by officers follows discussions and representations with key service providers, including KCC education. The Council's open spaces officer has stated that there is no requirement to contribute towards the recreation area to the south because the applicant is providing its own on site recreation area.
- 6.21 The NHS contribution request is considered to be compliant with the CIL Regulations tests and should therefore be carried forward into the legal agreement negotiations should the application progress to this stage.

Landscape impact

- 6.22 The advice of the Council's landscape and visual consultant was taken into account. As the main report records, they would recommend refusal, but planning Officers drew a different conclusion of the landscape and visual impact after conducting a site visit and considered that the impact in this regard was acceptable given that there are only limited visual impacts from long distance views surrounding the site.

Other Matters

- 6.23 It is respectfully submitted that it is unclear what is meant by this. The concerns raised by the Council's Climate Change Officer were dealt with by condition 32 of the original report which required the submission of details of the sustainability measures to be incorporated into the development.
- 6.24 The third traffic lane proposed by the applicant is supported by KCC Highways and Transportation and is considered to be an appropriate highway solution to serve the proposal. Officers consider a contribution towards the Key Street roundabout to be acceptable as mitigation to both the local and strategic highway network as agreed by Highways England and KCC Highways and Transportation. The ability to improve Church Lane would be fairly restricted by the narrow nature of said road and the high on street parking demands experienced and it would not be possible to attribute any potential impacts directly related to the proposed development.

Recent Appeal casesThe Barnwell Manor case and heritage assets

- 6.25 It is understood that Members referred to Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council [2014 EWCA Civ 137]. The decision is important because it provides a reminder that the graduated policy tests in the NPPF do not override statutory heritage duties.
- 6.26 In this case The Court of Appeal rejected an appeal over the quashing of a planning inspector's decision in relation to wind turbines. The inspector had found that the harm to settings of the nearby heritage assets would be less than significant. In reaching this conclusion, he placed great weight on his conclusion that observers would be able to understand that the wind farm differed in form and function from the heritage assets in question. His findings of less than significant harm had been carried forward into his balancing exercise, which he carried out by reference to policy about the general acceptability of renewable energy projects rather than to s.66 Listed Building and Conservation Areas Act 1990.
- 6.27 The inspector's balancing exercise was defective because instead of having regard to the desirability of preserving or enhancing the settings of listed buildings, he had instead considered harm by reference to general renewable energy policy, apparently because he had decided that harm would be less than significant. Lang J and the Court of Appeal held that the inspector had erred in not affording significant weight to the failure to preserve or enhance the setting of all listed buildings, as required by S.66.
- 6.28 The inspector's assessment was also partial and flawed because by focussing upon the observer's ability to understand the respective functions of heritage assets and turbines, he had left out of consideration factors which were highly material to the concept of setting as set out in national policy and English Heritage guidance. The contribution that setting makes does not depend on there being an ability to access or experience the setting.
- 6.29 This has been properly assessed in this application. The relevant statutory test is referred to in paragraph 9.16 of the original report, which accords with this case, as well as the NPPF. For this reason, it is considered that the recommendation remains unchanged.

Redrow Homes appeal decision

- 6.30 There was also reference at the last planning committee to an appeal by J M Beatty, J S Clark and Redrow Homes South Midlands at land at Station Road, Earls Barton in that the Secretary of State Eric Pickles refused permission for reasons similar to those discussed by Members and there were similar 5 year supply issues.
- 6.31 In coming to his decision, Eric Pickles gave significant weight to the conflict with the policies of the emerging neighbourhood plan, despite the fact that they had not yet been examined by a planning inspector.
- 6.32 Housebuilders JM Beatty, IS Clark and Redrow Homes South applied to Wellingborough Borough Council in September 2013, seeking outline planning permission to build 85 homes on a field immediately south of the built-up area of the village of Earls Barton. Permission was refused by the Council and the communities

secretary recovered the housebuilders' subsequent appeal for his own determination due to its potential impact on the emerging Earls Barton neighbourhood plan (NP).

- 6.33 The letter said Pickles agreed with Manning that the proposal would be "contrary to the basic intentions of the existing development plan", which sought to concentrate development in built up areas and avoid building on open countryside. The communities secretary also agreed that the Council was unable to demonstrate a five year housing land supply, however, meaning that individual housing policies in the existing spatial plan were out-of-date and a presumption in favour of sustainable development was engaged.
- 6.34 The communities secretary disagreed with the inspector's view that no demonstrable environmental harm would be caused by allowing the proposal. Unlike the inspector, Pickles found that the scheme would cause "the impression of sprawl", would reduce the visual amenity along a public footpath through the appeal site and was likely to result in the loss of high quality agricultural land: harms to which he gave "significant weight". Pickles accepted that no argument could be made for rejecting the appeal on grounds of prematurity to the NP, in light of the Council's previous approval for the much larger development at the Grange. He also agreed that substantial weight should be given to the economic and social benefits of the scheme.
- 6.35 Each appeal must be determined on its own facts. In officers' opinion, the main area of concern for the Secretary of State in that Redrow appeal was the conflict with a neighbourhood plan, which Newington does not have. Therefore this element is not comparable to the current application and it changes the complexion of the planning balance that needs to be struck. The Secretary of State also attached more weight in that appeal to the environmental effects such as the impact of that development on a footpath (and it is noteworthy that the length of the public footpath to be developed in that case was substantially more than is currently proposed), the assumption that good quality agricultural land would be lost and the claim that the development would give the impression of urban sprawl despite it being contained on three sides by existing residential development. Whilst there are some points of interest in this appeal decision, it is not directly relevant.

7.0 CONCLUSION

- 7.01 For the reasons stated above, the proposed development would represent sustainable development. The adverse effects are limited and they would not demonstrably and significantly outweigh the benefits that this new housing development would provide and it is considered to be acceptable subject to suitable conditions and section 106 obligations.

- 8.0 RECOMMENDATION** – This application is, as explained above, the subject of a planning appeal. As such the application will not be determined by Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision. Had the appeal not be submitted, the recommendation would have been to grant planning permission subject to a Section 106 Agreement, conditions and informatives as set out in the original report (appended).

2.5 REFERENCE NO – 15/510595/OUT			
APPLICATION PROPOSAL			
Outline application with all matters reserved (except for the details of a vehicular access point from London Road, including the widening and realignment of the A2) for residential development of up to 126 dwellings (including 30% Affordable), plus 60 units of Extra Care (Use Class C2), an allocated 1/4 acre of serviced land for potential doctors surgery, planting and landscaping, informal open space, children's play area, surface water attenuation, and associated ancillary works (Resubmission of 15/500671/OUT).			
ADDRESS Land Off London Road Newington Kent			
RECOMMENDATION This application is the subject of an appeal against non-determination. As such this application will not be determined by Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision. (The consultation period expires on 25 th April therefore I will provide Members with an update at the meeting). If the application had not been subject to an appeal and subject to additional information in respect of brickearth, the recommendation would have been to grant permission subject to a suitably worded Section 106 Agreement and appropriate planning conditions.			
SUMMARY OF REASONS FOR RECOMMENDATION			
Whilst the proposal is contrary to the adopted and emerging Local Plans, the Council's policies regarding the provision of housing are considered out-of-date because the Council cannot demonstrate a 5 year supply of housing land as set out in paragraph 49 of the NPPF. Therefore, the application must be considered in the context of the presumption in favour of sustainable development as required by paragraph 14 of the NPPF, and whilst finely balanced, the benefits of the proposal outweigh the costs to a degree that the proposal constitutes sustainable development and in the absence of material considerations that indicate otherwise, planning permission should be granted in my opinion.			
REASON FOR REFERRAL TO COMMITTEE			
The significant amount of objection including from residents, Parish Councils, Ward Member and MP, and so that Planning Committee can determine this significant controversial application.			
WARD Hartlip, Newington & Upchurch	PARISH/TOWN Newington	COUNCIL	APPLICANT Mr Gladman Developments
DECISION DUE DATE 8/4/16	PUBLICITY EXPIRY DATE 25/4/16	OFFICER SITE VISIT DATE 28/1/16	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
15/500671/OUT	Outline application for residential development of up to 330 dwellings plus 60 units of extra care (including a minimum of 30% affordable), an allocated 1/4 acre of serviced land for potential doctors surgery, demolition of farm outbuilding, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works. (Access being sought)	Appeal against non-determination with Public Inquiry scheduled for June 2016.	

15/500694/LBC	Listed Building Consent for the demolition of redundant farm outbuildings to the listed Pond Farm, in association with outline application for residential development covered under 15/500671/OUT	Refused	8/5/15
SW/95/0714	Conversion of agricultural buildings into 3 residential units	Withdrawn	

MAIN REPORT

BACKGROUND

An appeal against non-determination of the application has been lodged by the applicants. As a result it is important for Members of the Committee to pass a resolution as to whether they would have approved or refused the application if the application was within the jurisdiction of the Council to determine.

1.0 DESCRIPTION OF SITE

- 1.01 The site consists of 8 hectares of gently undulating land currently used for agricultural purposes in the form of fruit orchards. The eastern parcel of land is used for blackcurrant production with the western used for apple production. There are no buildings within the application site. The site is directly to the south of the A2 London Road and to the south west of Newington, immediately adjoining the built up area boundary.
- 1.02 To the east of the site are the residential dwellings fronting Playstool Close. To the south are a playground, sports pitches, allotments and community woodland. To the west is a further agricultural field and beyond this are an area of open land, Newington Industrial Estate and a small collection of dwellings fronting the A2 London Road. To the north of the site are the former outbuildings of Pond Farmhouse which have been excluded from the application site. It had previously been considered that these outbuildings were listed buildings by virtue of the fact they were within the curtilage of the grade II listed Pond Farmhouse which fronts the A2 London Road. Following legal advice which included a thorough assessment of relevant case law, it is now considered that the cluster of agricultural buildings to the north of the application site are in fact not listed buildings. A vehicle access from the A2 London Road serves these outbuildings.
- 1.03 A number of fruit farms and orchards dominate the landscape to the south of the site, particularly beyond the cluster of community uses immediately to the south of the site. There are further significant agricultural areas to the north of the railway. Immediately to the north and east are residential areas and to the west there is an industrial estate. This context is considered to reflect the edge of village location of the site.
- 1.04 A public right of way crosses the north west corner of the site, linking land to the west of the site with London Road. The site consists of grades 1 and 2 agricultural land which constitutes best and most versatile for planning purposes. There is a strong network of mature field boundaries within and surrounding the site.

- 1.05 The site is located within the countryside and a strategic gap as defined by the Proposals Map of the Swale Borough Local Plan 2008. Under the emerging local plan 'Bearing Fruits 2031', the site is located within the countryside and the cluster of community uses to the south are designated as a proposed local green space.

2.0 PROPOSAL

- 2.01 This is an outline application with all matters reserved except for the main site access from the A2 London Road. It is proposed to develop the site for up to 126 dwellings (30 dwellings per hectare on approximately four hectares of the site) including 30% affordable dwellings (38 dwellings). An extra care facility of 60 units is proposed and would fall within use class C2. ¼ of an acre of serviced land would be provided so that a doctors' surgery could be built on the land at some point in the future (no building is proposed under this application). Indicative planting and landscaping are shown on the development framework plan (Revision 1), as are an informal open space, children's play area and surface water attenuation. The open space includes a community orchard to the east of the dilapidated farm outbuilding with the children's play area and further open space to the west. The serviced land for a potential doctors' surgery is near the A2 with the extra care facility set further south. The indicative plan shows the dwellings to the south of the open space around a circular main street. It is also proposed to retain existing field boundaries and existing hedgerows as far as possible and plant new ones around the periphery of the site. Indicative footpaths are shown around the periphery of the site with a further footpath running up the centre of the site. Footpath links to the wider area are proposed near the community woodland and Orchard Drive to provide permeability.
- 2.02 A vehicular access point from London Road to the site is proposed in detail and would entail the widening and realignment of the A2 London Road to the south. The footway to the northern side of the A2 between 60 to 74 London Road would be widened to aid pedestrian movement. The widening of the A2 would allow the inclusion of a right turn lane for the east bound traffic. A new footway would be provided to the south side of the A2 roughly between 52 and 72 London Road with a puffin crossing (traffic signal controlled pedestrian crossing) to the front of 52 and pedestrian refuge to the front of 70. Two bus stops with shelters would be provided on the A2 heading in both directions, the first to the front of No. 74 and the second on the opposite side from No. 60. The public right of way would be upgraded to 2m wide with a tarmac surface and would cross the proposed vehicle access via a raised table. The existing hedge fronting the A2 would be removed almost in its entirety to allow the access works and appropriate visibility splays proposed.
- 2.03 The design and access statement sets out that the buildings within the site would not exceed 2.5 storeys reaching a maximum of 10.5m in height, with the vast majority of buildings being no more than 2 storeys in height, between 7.5 to 8.5m. It is anticipated that the extra care facility would be no more than 2.5 storeys in height.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	8 hectares (approximately 20 acres)	8 hectares	0

Approximate Ridge Height (m)	0	Max 10.5m and 7.5/8.5m	+ 10.5m and 7.5/8.5m
No. of Storeys	0	2/2.5	+2-2.5
No. of Residential Units	0	126 and 60	+186
No. of Affordable Units	0	38	+38

4.0 PLANNING CONSTRAINTS

4.01 The site is within the setting of the grade II listed Pond Farmhouse. The site has archaeological potential, consists of best and most versatile agricultural land, and is in a mineral safeguarding area for brick earth. Newington High Street is subject to a designated Air Quality Management Area. There is a public right of way in the north west corner of the site.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are both pertinent to this case.

5.02 The NPPF sets out the Government’s position on the planning system explaining that *“The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system. 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 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 the Framework taken as a whole; or*
- *Specific policies in this Framework indicate development should be restricted.”*

5.03 It further outlines a set of core land use planning principles (para 17) which should underpin both plan-making and decision taking including to contribute to conserving and enhancing the natural environment and reducing pollution. It further states – at bullet point (5) ‘take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it’.

5.04 At paragraph 18 it explains *“The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”*

5.05 Paragraph 34 deals with sustainable travel modes and suggests developments generating significant vehicle movements should be located where the need to travel will be minimised.

- 5.06 At Paragraph 47 it states that *“planning authorities should meet local housing needs and identify five year housing land supply with an additional 5% buffer”*. Paragraph 49 states *“that housing application should be considered in the context of the presumption in favour of sustainable development”* and that *“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.”*
- 5.07 Paragraph 64 of the NPPF states *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*
- 5.08 Paragraphs 47-55 seek to significantly boost the supply of housing. NPPF paragraph 49 confirms that the lack of a 5-year land supply triggers the presumption in favour of sustainable development as set out by NPPF para. 14. It is necessary to determine what the relevant policies for the supply of housing are in order to identify which are out of date. What constitutes a policy for the supply of housing has been the subject of legal judgement, which can be interpreted as either policies that have specific and direct impacts on housing supply or more indirect, but significant impacts on supply. Regardless of the approach taken, decision makers can and do take into account whether certain aspects of policies accord with the NPPF. Importantly, the decision maker must apply themselves properly to para. 49.
- 5.09 Paragraph 109 deals with the conservation and enhancement of the ‘natural and local environment’, and is discussed in the ‘appraisal’ section below.
- 5.10 Paragraph 112 goes on to say *“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”*
- 5.11 Paragraph 113 explains *“Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.”*
- 5.12 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 (paragraph 132).
- 5.13 Paragraph 135 advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 5.14 Paragraph 142: *“Minerals are essential to support sustainable economic growth and*

our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs.

However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation”.

- 5.15 In preparing Local Plans, local planning authorities should: define Minerals Safeguarding Areas and adopt appropriate policies in order that known locations of specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be worked; and define Minerals Consultation Areas based on these Minerals Safeguarding Areas; set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place (Paragraph 143).
- 5.16 And at paragraph 144 it stresses that Local Authorities should “*not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes*”.
- 5.17 The adopted 2008 Swale Borough Local Plan, however, remains the primary consideration for determining this application. This will be discussed in further detail later in this section.
- 5.18 The key policies from the adopted Local Plan are:
- SP1 (Sustainable Development)
 - SP2 (Environment)
 - SP3 (Economy)
 - SP4 (Housing)
 - SP5 (Rural Communities)
 - SP6 (Transport and Utilities)
 - SP7 (Community Services and Facilities)
 - TG1 (Thames Gateway Area)
 - SH1 (Settlement Hierarchy)
 - E1 (General Development Criteria)
 - E6 (Countryside)
 - E7 (Strategic Gap)
 - E9 (Protecting the Character and Quality of the Borough’s Landscape)
 - E10 (Trees and Hedges)
 - E11 (Protecting and enhancing the Borough’s Biodiversity and Geological Interests)
 - E12 (Sites designated for their importance to biodiversity or geological conservation)
 - E14 (Development Involving Listed Buildings)
 - E16 (Scheduled Ancient Monuments and Archaeological Sites)
 - E19 (Good Quality Design)
 - H2 (Providing for New Housing)
 - H3 (Providing Affordable Housing)
 - RC1 (Helping to Revitalise the Rural Economy)
 - T1 (Providing Safe Access to New Development)
 - T2 (Essential Improvements to the Highway Network)
 - T3 (Vehicle Parking for New Development)
 - T4 (Cyclists and Pedestrians)
 - C2 (Housing Developments and the Provision of Community Services and Facilities)
 - C3 (Open Space within Residential Development)

- 5.19 Relevant policies of the emerging Local Plan are;
- ST1 (Delivering Sustainable Development in Swale)
 - ST2 (Development targets for jobs and homes 2011-2031)
 - ST3 (Swale Settlement Strategy)
 - ST5 (Sittingbourne Area Strategy)
 - CP1 (Building a Strong Competitive Economy)
 - CP2 (Promoting Sustainable Transport)
 - CP3 (Delivering a wide choice of high quality homes)
 - CP4 (Requiring Good Design)
 - CP5 (Health and Wellbeing)
 - CP6 (Community facilities and services to meet local needs)
 - CP7 (Conserving & Enhancing the Natural Environment – Providing for Green Infrastructure)
 - CP8 (Conserving and enhancing the historic environment)
 - DM3 (The rural economy)
 - DM6 (Managing transport demand and impact)
 - DM7 (Vehicle Parking)
 - DM8 (Affordable Housing)
 - DM14 (General development criteria)
 - DM17 (Open space, sports and recreation provision)
 - DM19 (Sustainable design and construction)
 - DM21 (Water, flooding and drainage)
 - DM24 (Conserving and Enhancing Valued Landscapes)
 - DM28 (Biodiversity and Geological Conservation)
 - DM29 (Woodlands, trees and hedges)
 - DM31 (Agricultural Land)
 - DM32 (Development involving listed buildings)
 - DM34 (Scheduled Monuments and archaeological sites)
- 5.20 The emerging Minerals and Waste Local Plan for Kent, which is being completed through the statutory process at present, is also relevant as the site contains areas suitable for brick earth extraction.
- 5.21 Swale Landscape Character and Biodiversity Appraisal 2011 – The site is included within the Newington Fruit Belt, where the predominant landscape form consists of a number of orchards and fruit farms with a mature field boundary network. The Newington Fruit Belt has a strong landscape structure formed by the network of mature hedgerows and shelter belts that surround orchards. The area is characterised by narrow winding lanes enclosed by hedgerows, linear villages with scattered farmsteads and cottages. The area needs sensitive management and protection, though the SPD states that its sensitivity is ‘low’ and its condition ‘moderate’.

6.0 LOCAL REPRESENTATIONS

- 6.01 122 letters of objection have been received from residents, some of which are from the same address, which are summarised as follows;
- London Road pedestrian crossing will cause queuing traffic within the AQMA which would harm air quality and human health.
 - The A2 cannot cope with existing traffic levels. The proposal will make this worse. Temporary traffic lights already cause delays. Proposal will exacerbate existing parking problems. Parked cars make it harder to drive down already narrow lanes including Church Lane. Bull Lane will become a rat run. Traffic

noise, vibration, loss of privacy, odours, fumes and pollution will increase. Harm to pedestrian safety. Train station car park very congested. Inadequate road links. Negative impact on highway safety and convenience.

- The existing general infrastructure cannot cope with the existing population. Hospitals (Medway Hospital is in special measures), police, ambulance and fire service are overstretched. There is no local police station, dentist, doctor or health centre in the village. The play group, local school and nurse has no room for the amount of extra pupils that would be generated. Pressure on recreational facilities.
- The site is not allocated for housing in emerging or local plans.
- A significant amount of best and most versatile agricultural land would be lost which is needed for food production.
- Loss of wildlife including bats, habitat including trees, hedges and orchards.
- The proposal would increase the size of Newington by approx. 20% and increase the population significantly.
- There are no plans to improve transport infrastructure. Trains are overcrowded/downgraded, and bus service is very limited.
- Would change the character of a low density quiet village to that of a town. Proposals of this sort should be on the outskirts of towns or cities not small villages.
- Previous applications have been refused because there is no bypass.
- Safety is a concern when walking near groups of youths. There is concern about existing increases in crime. There are many elderly people in Newington and the influx of people won't help them feel safer.
- Newington cannot offer employment opportunities for new residents.
- Would rather have a green field to look at than a housing estate.
- Impact on social cohesion of Newington.
- Merging of settlements into ribbon development would be exacerbated by the proposal.
- The reduction in the size of the proposal compared to the previous application does not address any of previous objections.
- There are alternative brownfield sites available.
- The land for a doctors surgery is a red herring because the days of single GPs surgeries are coming to an end because of reductions in the Minimum Practice Income Guarantee and the aim/Government Policy for large GP practices offering a range of services.
- Public transport is insufficient to allow residents of extra care facility to access medical care, putting health at risk.
- The access road onto London Road (A2) would cause noise and disturbance to existing houses opposite the junction.
- Proposal is for wealth creation for applicant.
- People enjoy walking on the application site.
- Lack of water, drainage, accessibility, electrical services, parking for shopping, turning points for delivery vehicles, police presence and public transport.
- Council Tax will increase to fund the shortfalls in service provision created by the development.
- Cumulative impact with other applications in the area.
- Overshadowing, overlooking, loss of light, loss of outlook and loss of privacy to neighbours. Loss of property value. Hours of operation. Headlights will shine into houses opposite proposed junction.

- Contributions should be sought towards a Newington bypass.
- The proposed junction with the A2 should be a roundabout.
- Will set a precedence eventually leading to settlement coalescence akin to Medway Towns.
- Pre-application advice lacks public consultation.
- Previous appeal decisions and planning inquiry reports- previous similar applications on orchards rejected.
- Impact on listed building and conservation area.
- Layout and density of building design, visual appearance and finishing materials. Area at risk of subsidence with several sink holes appearing over the last year.
- Who will compensate residents for negative impacts?
- This application should be refused as per the previous application. If approved the applicant will apply for the additional properties.
- There are not enough shops in the village.
- Newington should expand in a manner to unite the school and church to the rest of the village, and not away from the core. Expansion would ensure retention of the train station and local amenities.
- There are two other developments in the area. We should not be forced to accept a third.
- Affordable housing would have to be incredibly cheap because there are few local jobs.
- We chose to live in the countryside, not a town.
- Lack of sewerage capacity.
- Harm to the public footpaths on the site.
- Houses would be ugly and not in keeping with the village.
- Object to commercial doctor's surgery due to parking/traffic problems and on a greenfield site. Lack of information re doctors surgery and would need detailed application.
- Wickham Close should have had a doctors surgery but the developer did not deliver.
- Loss of local employment at the farm land to be developed.
- Newington is not in need of housing.
- Ancient hedgerows will be destroyed.
- Are there plans for an archaeological survey?

6.02 Gordon Henderson MP objects to the application for the following summarised reasons;

- Site not included in Adopted or Emerging Local Plans.
- Significant pressure on already stretched local services such as health and education.
- Adverse impact on air quality through Newington.
- Disruption of flow of traffic along the A2, and would exacerbate already intolerable effect on the A2 of closures, of Detling Hill, the M2 or M20 for Operation Stack. The effect would be worsened still should the Lower Thames Crossing traffic be routed along the M2 and A249 as proposed.
- Pedestrians will have to cross the A2 thereby disrupting the traffic flow and causing traffic to queue to the detriment of air quality.
- Sterilisation of brickearth mineral deposits.

6.03 Ward Councillor John Wright commented twice as follows;

“This application is not sustainable proposing to add a very large number of properties to a small village, putting pressure on already minimal services that would require out commuting through AQM's in Rainham in one direction or through AQM in Newington in the other. This proposed estate would not integrate well with the village meaning the new population would have to cross the A2 to the church /village hall / primary school / etc. If the permission was granted access to a known safeguarded brickearth reserve could be sterilised at paradise farm as the new and existing properties would be within 100metres of the proposed development. This site does not feature in the local plan or emerging local plan or very low in list of sites when compared for sustainability, etc. I would wish to reserve my right to comment further or appear at appeal to point out the practical constraints.”

“This proposal may sterilise a brickearth reserve by placing highway infrastructure or houses within the exclusion zone of a haul road. The cumulative effect of this development increases the pollution within the Newington High Street. The current AQMA figures do not quantify the cumulative effect of development already granted such as the working mens club and other increases in traffic from Medway and Sittingbourne developments .there are no mitigation measures or plans put in place to protect public health in the high street when pollutant levels go over the safe levels especially with the increased use of the zebra crossing and stationary vehicles. This is not the best site and performs badly within the local assessment and is not sustainable with all people moving here travelling away to work not in Newington. Train services have already been reduced to Newington station. Bus services are also not good. Loss of most versatile agricultural land. Would wish to speak at any planning committee or inquiry.”

6.04 Newington Parish Council objects for the following summarised reasons;

- Loss of best and most versatile agricultural land.
- There are alternative 'brownfield' sites available in the Borough.
- The site is outside both the current and the emerging Local Plans.
- Pond Farm has never been considered suitable for development. The proposal is contrary to policies E1 and H2. Under the terms of the NPPF site is not sustainable and the application is contrary to the Development Plan.
- Application destroys the setting of listed buildings.
- Children could not walk from the development to the schools/bus stops in the area safely.
- Increased car traffic on to a B quality London Road which struggles and fails to meet it's A designation. Newington was designated by KCC as a priority for a by-pass but this was dropped 20 years ago due to costs at a time of budget cuts.
- The A2 has long traffic queues, two miles west at Rainham and two miles east at the Key Street A249 junction, each morning and evening. The designation of the A249 as part of 'operation stack' will result in greater gridlock whenever the scheme is in operation.
- Newington village is 400 yards to the east, well-known as the narrowest part of the whole A2, where it is not possible for lorries to pass at the same time as vehicles from the opposite direction (a frequent problem due to a large cold store two miles to the west). Traffic collisions at this point have necessitated

the replacement of the pedestrian-safety railings on three occasions in the past year.

- Newington centre is an AQMA where levels of NO₂ pollutant consistently exceed EEC safety limits. The factors the applicant describes as causing this (canyon effect and congestion) are constant factors due to narrowness of the road and proximity of unbroken buildings; the Pond Farm development could only increase congestion and so cause greater harmful air pollution to pedestrians and village-centre residents.
- The Air Quality Assessment submitted by Gladman Developments Limited is dated October 2014, using 2013 data; presumably this was commissioned for their previous planning application.
- Local infrastructure cannot support a development of this scale. Newington Primary School is close to capacity, local bus and rail services are poor and Medway Hospital is in special measures. Whilst we note that the outline plans include land allocated for a doctor's surgery, this is for future provision by a third party and not part of the building proposed by Gladman.
- Newington Parish Council formally request that, should officers recommend the acceptance of this application, it should be called-in for full discussion and a decision by Swale Borough Council Planning Committee.

6.05 Hartlip Parish Council objects for the following summarised reasons;

- Site falls outside adopted and emerging local plans and is a premature application. The site has never been considered a suitable site for housing development, is contrary to Policy H2 and is outside the built up area boundary. The site has been looked at by the LDF Committee and judged unsuitable in the emerging Local Plan.
- Not sustainable development as defined by the NPPF.
- Local schools are full and Medway Hospital is in special measures. There are waiting lists at the nearest doctors and dentists surgeries (none in Newington).
- The proposal would swamp local services.
- Contrary to Policy E1 of adopted local plan as it would harm residential amenity and fail to protect and enhance the natural and built environments; detrimental to visual amenity.
- Would exacerbate existing traffic, congestion and air quality problems. Residents of the proposal would have to use their car to get anywhere. Bus and train services are very poor.
- Lack of employment opportunities within Newington or nearby, and none are likely to arise.
- Loss of best and most versatile agricultural land.
- There is an appeal for 250 houses on land north of Moor Street, Rainham, and a further application for 200 houses in Otterham Quay Lane, Rainham. Both site are less than 2 miles away. These three applications by the same applicant are for about 650 houses to be built in an area where traffic is already at a standstill for much of the day.
- There is an application for brickearth extraction only a few hundred yards from the site which is on hold which, if granted, would bring dozens of extra lorry movements a day along the same stretch of road.
- This agricultural land generates creates employment and local fruit. Loss of business to the farmer on the site.
- The listed farm buildings must be preserved.

6.06 Upchurch Parish Council objects for the following summarised reasons;

- The impact on the local infrastructure and services. The developers cannot possibly guarantee any increase in services offered by other organisations such as the NHS.
- Air pollution levels will increase in Newington Village Centre which currently regularly exceed EEC safety limits.
- Proposal would exacerbate existing traffic problems and tailbacks throughout the village, hampered further by the narrow A2 in Newington where two large vehicles cannot pass each other.
- The site is outside both the current and emerging local plan and would obliterate working agricultural land.
- With regards to Newington the draft local plan states: Despite its role and level of services, development opportunities are very limited due to the valued and important heritage, landscapes and habitats to the north of the village, poor pedestrian connections between north and south of the village, a restricted internal road network, poor air quality and surrounding high quality agricultural land. The local school and Doctors surgery could not facilitate the families from a development of this size and the local hospital remains in special measures.

7.0 CONSULTATIONS

7.01 **The Council's Strategic Housing and Health Manager** confirm the requirement for 30% affordable housing. This does not include the extra care element because this falls within C2 use class not C3. Of the 30%, 70% of this should be affordable rent tenure and the remaining 30% should be shared ownership tenure. Despite the affordable housing statement, without a full accommodation schedule it is not possible to confirm whether the spread of affordable units is acceptable and proportionate to the open market housing. Concern is raised with regard to securing the affordable housing via condition rather than as part of the S106 agreement as suggested by the applicant. It was confirmed that there is a requirement for affordable housing in the Newington and Sittingbourne areas for all types and sizes of accommodation. In line with the Swale SPD on developer contributions it is expected that the units to be offered be evenly distributed across the site and in appropriately sized clusters (the stated intention to form clusters of between 6 and 10 units) is acceptable. Fully adapted affordable wheelchair homes would be sought, the number of which would be agreed with the preferred registered provider. Evidence to support the requirement of an extra care scheme should be sought.

7.02 **The Council's Environmental Protection Manager** comments;

"Air Quality

Further to my memo dated 26th January, I have now been made aware of an updated AQ assessment, dated January 2016. This is an updated assessment and whilst the core part of it is the same, there is recognition of the importance of mitigation measures, as I suggested in my previous memo. The measures suggested in paragraph 8.2.13 on pages 41, and concluded on 44 in 9.2.8 (which are discussed at paragraph 9.20 below) are acceptable and should make a difference to reducing numbers of vehicle movements and hence a contribution to existing air pollution levels.

I remain concerned about cumulative impacts of several developments on air quality, not just at Pond Farm affecting Newington, but elsewhere in the Borough. However, I am comforted by the leeway that exists between actual Nitrogen Dioxide continuous monitoring results at Newington and the exceedance value, and the effect of Pond Farm and other recent proposals in and around Newington.

I accept the report and its conclusions and remove my objections from an air quality standpoint.

Similarly, I have no noise objections provided the mitigation measures suggested in the report are carried out as described. As before, I do not see a contaminated land assessment included with the documentation – this will be necessary for complete reassurance about this site and any potentially previous contaminative uses and practices.” A contaminated land assessment condition is recommended accordingly.

7.03 **The Council’s Greenspaces Manager** welcomes the amount of green space proposed and questions the need for such a large landscaped area between the proposal and the listed building to the north when there is the chance to increase the size of the recreation ground to the south. The same applies to the proposed play area. If the applicant is to provide and manage the proposed greenspace and play area themselves the Council only requires details of the play equipment. If the Council is to adopt and subsequently maintain the greenspace and play area, a contribution of £861 per dwelling is required. There would need to be details of facilities such as litter and dog bins. If the land is to be transferred to the Council a 10 year commuted sum maintenance contribution is required. The scheme has now been amended so that less than 200 dwellings are proposed therefore no sports pitch contribution is required.

7.04 **The Council’s Climate Change Officer** has highlighted some inconsistencies and lack of detail regarding sustainability measures proposed.

7.05 **The Council’s Landscape and Visual Impact Consultant** comments;

“The landscape condition/quality of the site and the surrounding countryside is considered to be good. The site is not within any national or local landscape designations, and there are some urban influences. However it is considered to derive some landscape value from its attractive orchard farmland and the immediate context of a listed building and a community woodland.

The proposed development would represent a substantial, approximately 20% increase in the existing built up area of the village of Newington, and the scale of the proposals are not considered to be appropriate to the established landscape character of the area, or to take appropriate account of the existing townscape of the village.

From a review of the development proposals there are considered to be some serious concerns about whether the proposed western boundary would represent a logical, defensible, long term boundary for the village and there are a number of other uncertainties relating to the height of the proposed development, setbacks and the landscape strategy in the absence of clear parameters being set.

It is further considered that the proposed development would be likely to give rise to a number of significant, localised adverse landscape and visual amenity effects ie result in harm to the site and its immediate contest and to users of some of the local PROWs. This harm would be likely to arise from the proposed access, from the loss of characteristic orchard farmland to residential development and from the implicit extent, scale and height of the development.

Overall it is considered that the development would be in conflict with relevant National Planning Framework policies in respect of landscape and design, in particular paragraph 17 bullet point 5 (set out in full at paragraph 5.03 above), paragraph 64, together with local plan policies E7 and E9, and the adopted Supplementary Document Swale Borough Council Landscape Character and Biodiversity Appraisal Guidelines.

Taking account of the above conclusions, it is considered there would be a strong justification for Swale Borough Council to refuse the planning application on landscape and visual grounds.”

- 7.06 **The Council’s Rural Planning Consultant** sets out the scale of development, and notes that the site now consists of 8.2 hectares and is a mix of grade 1 and grade 2 (the larger proportion) land, which is best and most versatile for planning purposes, and states;

“To summarise, the NPPF states that necessary development that impacts on agricultural land should take place on poorer land in preference to land of higher quality. Firstly, therefore, it must be decided whether this development is "necessary"; that would be a Planning matter outside my own advisory remit. If "necessary", the next stage is to decide whether sufficient arguments have been presented for overriding the NPPF guidance, such that, in this case, poorer land should not be sought in preference to this higher quality land. Again, balancing those arguments would be a Planning decision, outside my remit.”

- 7.07 **KCC Ecology** advises that bat activity surveys have been carried out and detail that bats are foraging in low numbers within the site along the hedgerows. The ecological survey details that the majority of the hedgerows are to be retained and therefore retaining the connectivity for foraging/commuting bats within the proposal. Lighting can be detrimental to bats and so should be designed with the input of an ecologist and it is advised in accordance with the Bat Conservation Trust’s Bats and Lighting in the UK guidance. Bat emergence surveys were carried out on the agricultural buildings north of the application site which are not being demolished as part of this proposal. There is a contradiction in the report because it states that a common pipistrelle appeared to emerge from the building but goes on to state that a roost had not been identified as a statutory constraint to the proposal. KCC Ecology advises additional information in not required because the buildings are not being demolished, open space will be created adjacent to the buildings, and existing hedgerows will be retained within the development.

The site is within 3km of the Medway Estuary and Marshes Special Protection Area and Ramsar site and 7km of the Swale Special Protection Area and Ramsar site. Mitigation measures will be required to prevent an adverse effect on the integrity of these sites. The amount of greenspace proposed is not sufficient to rule out any likely significant effects on the designated site therefore contributions are required towards

a Strategic Access Management and Monitoring Plan (SAMMP). Ecological enhancements should also be conditioned if the application is approved.

7.08 **Natural England** notes the site is 2.7km south of the Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar site and therefore has the potential to affect their interest features. These sites are also a SSSI. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). Regard should be had to the potential impacts on these European sites. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

The consultation documents do not include information to demonstrate the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment (HRA). In advising your authority on the requirements relating to the HRA, and to assist you in screening for the likelihood of significant effects, based upon the information provided, Natural England offers the following advice:

- The proposal is not necessary for the management of the European sites.
- Subject to appropriate financial contributions being made to strategic mitigation, ie the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that the strategic mitigation is in place before the dwellings are occupied, the proposal is unlikely to have a significant effect on these sites, and can therefore be screened out from any requirement for further assessment.
- This should also include proportionate contributions made for the proposed care home accommodation, if they include permanent staff accommodation and/ or the residents are likely to have some ability to recreate on the SPA.

The applicant has agreed to pay the full SAMM tariff (of £223 per dwelling) therefore the proposal is unlikely to have a significant effect on the designated sites, and can be screened out from any requirement for further assessment.

It is advised that the SSSI does not represent a constraint to the proposal.

7.09 **KCC Highways and Transportation** confirms the revised junction layout has addressed previous concerns, as the footway on the northern side of the A2 has now been widened as requested, and the pedestrian crossing facilities proposed have been upgraded from a simple refuge island to a traffic signal controlled crossing. This is a more appropriate arrangement of crossing at this location, given the volume of traffic on the A2 and the level of pedestrian activity anticipated. The type of junction to serve this development, a ghost island junction with right turn filter lane, is appropriate. Should the development obtain planning approval, I would request that the provision of these off-site works are secured by condition, to be completed prior to the occupation of any residential element on the site. The applicant should be made aware that a Section 278 Agreement will be required between them and Kent County Council Highways & Transportation to carry out these works, and this will require a separate technical submission and approval process at that time for the detailed design.

The traffic modelling undertaken for the Key Street/A249 junction shows a need for contributions towards an improvement scheme at this roundabout, as was the approach taken for the recent Spirit of Sittingbourne town centre regeneration scheme (see 14/505440/FULL). On that basis, Highways England have requested that £88,935 be sought through a Section 106 Agreement to secure that amount, and I agree that this should be obtained in accordance with their wishes. Lastly, and as highlighted in my previous response, I had asked that the applicant consider providing contributions towards bus services, as this would assist with the goals of the Travel Plan. Details are still being explored in this respect, to see whether it would be possible to enhance services or even assist with the retention of existing provision, and this may be a matter that could take some time to report back. However, at this stage I would suggest that specific details can be negotiated as part of the drafting of the S106 Agreement, and an agreeable conclusion to those discussions reached. Consequently, I have no objections to the proposals in respect of highway matters subject to conditions.”

7.10 **Highways England** raises no objection and its comments are summarised below;

- Its key interest is the impact on A249 trunk Road.
- Application indicates the development will generate 55 trips in the AM peak and 60 in the PM peak that will access the A249 Key Street Junction which will operate over capacity in the peak hours in 2025. As a result of the trips generated, the performance of the A249 Key Street Junction will be adversely affected.
- Mitigation at A249 Key Street Junction will be necessary.
- Whilst we have some concerns about the modelling approach undertaken in which revised entry widths, flare lengths and half widths have been utilised to better represent existing queue lengths without provision of the supporting evidence to verify this, the Transport Assessment states a willingness to make contributions towards junction improvement.
- The Spirit of Sittingbourne development is to provide a contribution of £50,000 towards improvements at A249 Key Street Junction, the Transport Assessment related to the development highlights an impact of 59 trips within the AM and PM peak. The contribution per trip can be calculated as £50,000 / 59 = £847. Applying the above value to this application would result in a contribution of £88,935. (£847 x 105 trips)
- Highways England has no objection to this subject to a financial contribution of £88,935 to provide appropriate mitigation at A249 Key Street.

7.11 **KCC Developer Contributions** has requested the following;

	Per Applicable House (x 126)	Per applicable flat	Total	Project
Primary Education	£2360.96	£590.24	£297,480.96	Towards Regis Manor Phase 2 expansion
Secondary Education	£2359.80	£589.95	£297,334.80	Towards Sittingbourne Academy Phase 2 expansion

	Per Dwelling	Total	Project
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Community Learning	£60.43	£7614.18	Towards new equipment at Sittingbourne Adult Education Centre
Youth Service	£37.58	£4735.08	Towards new equipment at New House Youth Centre, Sittingbourne
Libraries	£227.00	£28,602.00	Towards fitting out costs of new Library in Sittingbourne Hub and bookstock for mobile library service attending at Newington
Social Care	£63.33	£7979.58	Towards Changing Place Facility in Sittingbourne Hub
	1 Wheelchair Adaptable Home as part of the on site affordable homes delivery		
Broadband Condition	Before development commences details shall be submitted (or as part of reserved matters) for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process. INFORMATIVE – The BT GPON system is currently being rolled out in Kent by BDUK. This is a laid fibre optical network offering a single optical fibre to multi point destinations i.e. fibre direct to premises.		
Highways	<i>Kent Highway Services will respond separately</i>		

7.12 **KCC Waste and Minerals** considers the submitted minerals assessment inadequate as there is no trial trench data to corroborate just two 1950's dated bore hole logs that are not detailed as to where they are located within the planning application area. This does not result in an accurate or reliable data base on which to assess the volume of minerals. The 100m buffer zone is an arbitrary self-imposed limitation that may well be unnecessary without further justification. Economic minerals should be extracted prior to development to avoid sterilization, unless there are compelling grounds that they should be exempt from the safeguarding presumption that is in accordance with the conservation of minerals provisions of the NPPF. The information submitted makes it difficult to determine whether the minerals threatened with sterilization are of economic importance or not. It is considered by the County Council that this is a serious deficiency of the assessment. The applicant has submitted a thorough rebuttal of the comments of KCC, which in turn was rebutted by KCC. They argue that the applicant / appellant should provide more information in order to demonstrate that practicability and / or viability reasons prevent the extraction of the brickearth.

7.13 **KCC Public Rights of Way Officer** considers the proposed junction of public footpath ZR60 with the proposed main street is acceptable and would reiterate the need for a suitably safe crossing point over the A2. There would be no intention of

adopting any of the proposed walking routes to the south of the proposed development. The express consent of the highway authority is required to disturb the surface of the right of way or erect anything on or across it. No planting should take place within 1m of the right of way. Six weeks' notice is required if the applicant needs to apply for a temporary traffic regulation order whilst works are undertaken.

- 7.14 **Swale Footpaths Group** states; "...the footpath clipping the N.W. corner of site seems to be unaffected. There is a recently created public footpath just outside the S.E. corner: please check. Although not strictly a p.r.o.w. issue crossing the A2 is already difficult at this point. A "pedestrian refuge" would be useful, but what about a light controlled crossing too?"
- 7.15 **KCC Archaeology** notes the rich archaeological potential of the site. It wishes to see evaluation of the site prior to development and should the Roman road lie within the northern part of the site then provision should be allowed to secure its preservation and recognise its alignment/presence as a historic feature in the development layout. *It is important therefore that the archaeological evaluation takes place in advance of a decision on a full application that includes development layout.* An archaeological field evaluation condition is recommended with preservation in situ of any important remains.
- 7.16 **KCC SUDS Team** acknowledge that a SUDS scheme is technically achievable on the site subject to relevant conditions listed below. It has requested an indicative masterplan with the drainage features shown.
- 7.17 **The Environment Agency** states "We have assessed this application as having a low environmental risk. We therefore have no comments to make."
- 7.18 **Southern Water** advises; the exact position of foul sewers on site must be determined before the layout is finalised; no development or tree planting within 3m of foul sewer; no soakaway, swales, ponds, watercourses or any other surface water retaining or conveyancing features within 5m of a public sewer; existing infrastructure to be protected during construction. Due to changes in legislation, sewers now deemed to be public could be crossing the property so if one is found during construction it should be assessed. The applicant is advised to contact Southern Water for discussions. Initial investigations show southern water cannot accommodate the needs of this application without the development providing additional local infrastructure. The proposal would increase flows into the wastewater sewerage system and as a result increase the risk of flooding in and around the area contrary to Para 109 (bullet point 4) of the NPPF. Section 98 of the Water Industry Act 1991 provides a legal mechanism through which the appropriate infrastructure can be requested by the developer to accommodate the proposal.

A prior to commencement foul and surface water condition with implementation timetable is requested. An informative directing the developer to enter into a formal agreement for sewerage infrastructure is advised. Advice regarding the design of an on site pumping station is provided. There are no surface water sewers in the area to serve the development so alternatives, not involving disposal to a public sewer, should be sought. If SUDS are to be used they should be appropriately designed and a perpetual maintenance programme secured. There is inadequate capacity to provide a water supply to the proposal. Additional off-site mains, or improvements to

existing mains will be required to provide sufficient capacity to serve the development. A condition requiring details of water infrastructure prior to commencement of development is requested.

I sought clarification from Southern Water regarding the content of the utility law document submitted as part of the application. In response it clarified that if the developer intends to use their statutory rights to connect to the public sewer, the capacity upgrades of the system may not necessarily keep pace with the intended development timescales because of regulatory investment system used. Therefore, the previously suggested conditions are required.

- 7.19 **Southern Gas Networks** provides general guidance in relation to construction near its apparatus. It neither objects to nor supports the application.
- 7.20 **UK Power Networks** raises no objection to the proposal.
- 7.21 **The Lower Medway Internal Drainage Board** confirms the site is outside of the IDB's district and provided that off-site surface water runoff is not increased the proposed development is unlikely to affect the Board's interests. The SUDS should be designed to accommodate runoff from the 1 in 100 year storm event (+30% to allow for the predicted effects of Climate Change). Any permission should be conditioned to this effect, and for details of drainage to be designed and agreed in direct consultation with KCC's drainage and flood risk team. This should include the details of future maintenance of the drainage system.
- 7.22 **Medway Council** raises objections due to the impact on secondary schools in Medway which can be overcome through financial contributions towards the expansion of secondary schools; and the Rainham AQMA which can be overcome by the provision of an up to date Air Quality Assessment and provision of appropriate mitigation measures. Medway Council subsequently provided a details contribution request for school contributions demonstrating CIL regulation compliance. I have asked Medway Council and KCC for a combined response to ensure the applicant is not charged twice for secondary school provision. The applicant has provided an Air Quality Assessment for the Rainham AQMA and I am currently awaiting Medway Council's comments on it with the hope that its objection in this regard will be removed.
- 7.23 **The NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups** considers the proposal does not warrant a new GP facility but as existing GP practices in the area are at capacity a S106 contribution of £164,160 is required towards expansion of existing practices. No project was identified nor whether 5 or more contributions had been sought for a single project so I have requested these details from the Clinical Commissioning Groups.
- 7.24 **The Campaign to Protect Rural England Kent Branch** has submitted a 14 page objection recommending refusal which is summarised as follows;
- Application inconsistent with plan-led approach the NPPF advocates. Site has not been considered at any stage of the emerging local plan.
 - Only the applicant considers this a sustainable site. The emerging local plan description of Newington is quoted as evidence of the villages unsuitability for development of this sort.

- Saved Local Plan policies are up to date and consistent with NPPF.
- The site is not deliverable for housing because it is not suitably located for development as confirmed by the SHLAA. The SHLAA shows the site is not required to achieve the increased housing target required by the Inspector in her Interim Findings.
- The lack of a 5 year supply of housing land does not mean automatic approval given our view that the adverse impacts outweigh the benefits.
- The proposal pre-empts and undermines the emerging local plan, and it is considered that there are grounds for refusing permission based on prematurity (NPPG quoted).
- Proposal would undermine Council efforts to secure town-centre regeneration and brownfield redevelopment first, as per adopted and emerging local plan.
- The benefits of addressing housing land shortfall should be weighed against the advanced stage of the local plan.
- Loss of countryside and impact on landscape character. Proposal contrary to adopted and emerging local plan policies as it is located within the countryside, as supported by NPPF core principles regarding the countryside.
- Encroachment in a countryside gap. The site is not in a gap in the emerging local plan but Policy DM25 of the emerging local plan should apply anyway because of the stated desire to prevent settlement coalescence.
- Loss of best and most versatile agricultural land should be robustly justified. NPPF steers development away from such land and to lower quality land and is echoed in policies ST1 and DM31 of the emerging local plan.
- The proposal is not sustainable development therefore the presumption in favour in para 14 NPPF does not apply.
- The results of the submitted air quality assessment are dubious. Our analysis of their results shows that the verification procedure, when conducted on a sounder statistical basis, indicates little or no relationship between the modelled and therefore forecast pollution levels and actually recorded ones (technical appendix provided).
- There is no submitted Habitat Regulations Assessment. An appropriate contribution towards the Strategic Access Management and Monitoring programme for the Special Protection Area to the north should be agreed with Natural England before the Council can conclude 'no likely significant effect' on the SPA.

7.25 **Kent Police** note reference to crime prevention in the design and access statement. Whilst the submission is largely indicative, there has been no communication with the applicant. It is recommended that if approved a condition securing measures to minimise the risk of crime is attached, or alternatively a letter or informative.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The applicant has provided;
- Application form
 - Location plan, as amended
 - Development framework plan, as amended
 - Planning Statement and draft heads of terms
 - Design and Access Statement
 - Arboricultural Assessment
 - Heritage statement
 - Addendum heritage note
 - Archaeology desk based assessment
 - Energy Statement

- Socio-Economic Sustainability Statement
- Affordable Housing Statement
- An assessment of current and future sustainability
- Noise and vibration assessment
- Travel plan
- Transport assessment as amended
- Air quality assessment for Newington and Rainham
- Soils and agricultural land use and quality
- Foul drainage analysis
- Utilities appraisal
- Flood risk assessment
- Ecological appraisal
- Landscape and visual appraisal
- Mineral safeguarding report
- Statistics demonstrating the requirement for extra care housing
- Statement of community involvement

9.0 APPRAISAL

Principle of Development

- 9.01 It is considered that it would not be appropriate to pursue a reason for refusal based on prematurity because the proposals seem neither of a scale or location likely to prejudice the emerging plan-making process. The proposal is contrary to policies E6 and E7 of the adopted Local Plan because it entails primarily residential development in the countryside that would erode the strategic gap. Similarly, the site is outside the built up area boundary set out by policy ST3 of the emerging Local Plan and is therefore contrary to it (noting there is no strategic gap applied to this site under the emerging Local Plan). The level of objection relating to the fact this site is not allocated for such purposes under either the adopted or emerging local plans is noted. However, it is important to draw a distinction between sites allocated for such development under adopted and emerging local plans, a process which allows the very best of the available sites to be so allocated, and the possibility that, at the point a planning application such as this is determined, if the Council cannot demonstrate a five year supply of housing land as required by paragraph 49 of the NPPF the Council's policies regarding housing are considered out of date and therefore the application should be considered in the context of the presumption in favour of sustainable development set out in paragraph 14 of the NPPF.
- 9.02 Based on the Objectively Assessed Need of 776 dwellings per annum now established under the emerging local plan examination process, the Council's housing land supply is 3.8 years. This is because the Council is yet to make the allocations sufficient to achieve the full 5 years required by the NPPF. The prospect of the Council having a 5 year supply is at best approximately a year away (when the new Local Plan is adopted) at the time of writing. Therefore, both adopted and emerging local plan policies regarding housing are out of date, paragraphs 49 and in turn 14 of the NPPF apply, and there is no timely prospect of the Council achieving a 5 year supply through the emerging local plan process such that the Council could reasonably resist this proposal because of a short term prospect of achieving a 5 year supply.

- 9.03 Within this context it would be extremely difficult to argue that the principle of development is unacceptable and the lack of a 5 year supply should weigh in favour of the development in my opinion. The positive provision the proposal would make to housing land within the Borough should be afforded significant weight because of the contribution this would make to the social strand of sustainable development.

Visual and Landscape Impact

- 9.04 The applicant's landscape and visual appraisal considers that the impact of the proposal will be acceptable. The Council's landscape and visual impact consultant's comments in relation to this assessment are provided above (at paragraph 7.05) and consider the impact in this regard unacceptable. In my opinion, the site is well contained within its immediate context because the site is reasonably flat as opposed to being on an exposed hillside for example. The existing dwellings to the east provide strong containment for the site and it will be possible to secure a sufficient separation distance at reserved matters stage from these dwellings to prevent visual harm arising for residents. The site is very well contained in views from the south, particularly by the mature community woodland and the hedgerows within the southern boundary of the site which are indicated to be retained. The western boundary hedge would be retained as far as possible which would provide containment for the site when viewed from the west and the public right of way. Immediate views from the north would, over time, become relatively well contained given the applicants stated intention of replacing the mature hedgerow fronting the A2, as necessitated by the required highway works, with a similar hedge set to the south of the realigned/widened A2 and the required visibility splays for the new vehicle access. The significant public open space to the north of the site surrounding the Pond Farmhouse outbuildings, along with the community orchard would again soften the visual and landscape impacts of the proposal.
- 9.05 The broad development scale parameters provided in the design and access statement indicate that the vast majority of the dwellings on the site are likely to be between 7.5/8.5m tall which is fairly standard. However, the potential for some of the buildings to be up to 10.5m in height and 2.5 storeys would not have an unacceptable impact in my opinion. The most significant visual and landscape impact would arise from the extra care facility given the potential for this to be a significant block of building, in the form of a 2.5 storey building up to 10.5m tall. The dwellings and extra care facility would be visible within the surrounding wider landscape, perhaps most significantly from the public right of way to the north of the railway line to the north of the application site, the public right of way to the west of the site and the public right of way to the south of the site that provides access to the cluster of community uses. I have walked the length of the public right of way to the north of the railway line (which is elevated relative to the application site) and I do not consider that there would be any significant landscape or visual harm arising from the proposal and the potential scale of development sufficient to warrant refusal of permission in my opinion. By retaining or replanting hedges and field boundaries the proposal complies with the Landscape Character and Biodiversity Appraisal 2011 guidelines.
- 9.06 In coming to this conclusion it is important to draw a distinction between this and the earlier scheme. In my view it is possible to conclude that the previous scheme was harmful in this regard and the current scheme is not because of the very significant difference in the scale of the proposals with 204 fewer dwellings now proposed and a

significant reduction in the size of the application site with the western field now excluded. The lack of identifiable visual and landscape harm is a positive factor that weighs in favour of the application because of the contribution this makes to the environmental strand of sustainable development.

Residential Amenity

- 9.07 The main impact in this regard would be to residents of dwellings along Playstool Road which back onto the application site, and the limited number of dwellings along London Road which do the same. As previously stated, the site is sufficiently large to secure at reserved matters stage an appropriate separation distances between existing and proposed dwellings to prevent harm to residential amenity via overshadowing, overbearing, overlooking, loss of light etc. Dwellings along Orchard Drive benefit from the enhanced separation distance provided by the green wedge indicatively running along the southern edge of the application site to the extent that the impact would be minimal and acceptable. The dwellings fronting London Road would benefit from the significant depth of the public open space and community orchard such that the impact on residential amenity would be minimal and acceptable. The dwellings on the northern side of London Road would not be harmed by the development including the proposed works to the London Road. The proposed vehicle access would not cause undue noise and disturbance to residents of these dwellings, nor would the pedestrian crossings and bus stops, over and above the level of disturbance currently experienced along this part of the A2. There are no dwellings immediately to the west of the main body of the application site to effect. Subject to standard conditions to control the hours of construction, construction vehicle parking etc the impact on residential amenity would be acceptable in my opinion. The lack of identifiable harm to residential amenity is a positive factor that weighs in favour of the application because of the contribution this makes to the environmental strand of sustainable development.

Highways

- 9.08 Highways England raises no objection to the impact on the strategic highway network including the A249 and M2, and KCC Highways and Transportation raises no objection to the impact on the local highway network including the A2 and Newington High Street pinch point which has raised considerable concern in the representations received. Within the area immediately surrounding the site, the vehicle access point is acceptably designed and the widened and new pedestrian footways to the north and south of the A2 are appropriate. The pedestrian crossing facilities proposed have been upgraded from a simple refuge island to a traffic signal controlled crossing which is appropriate given the busy nature of the A2 and would help to secure pedestrian safety. The widening and realignment of the A2, along with the new junction design is appropriate. The traffic modelling submitted is deemed acceptable by both Kent Highways and Highways England in relation to the Key Street/A249 junction. It is appropriate for the development to contribute towards an improvement scheme at this roundabout, as was the approach taken for the recent Spirit of Sittingbourne town centre regeneration scheme that gained approval last year. On that basis, Highways England has requested that £88,935 be sought through a Section 106 Agreement to secure that amount, an amount Kent Highways also agrees to. Contributions towards enhanced bus services and retaining existing services to assist the goals of the travel plan are still being explored and will take some time to conclude therefore it is appropriate to deal with this during the negotiation of the S106 agreement.

- 9.09 The impacts of the construction phase are considered acceptable as are the longer term traffic levels generated by the development. It is possible to consider the highway impacts of the proposal acceptable, in contrast to the original application, because of the reduced size of the proposal with commensurate highway impacts, the improved transport modelling information provided, and the ability to secure contributions towards highway improvements.
- 9.10 The submitted travel plan states a series of underlying objectives and specific outcomes which include traffic reduction, achieving the minimum number of car traffic movements to and from the development, supporting walking, cycling and public transport, and reducing the need to travel to and from the site. To assist walking the applicant proposes to;
- Install a footway to the south side of London Road, widen the footway to the north side and provide pedestrian crossings.
 - The applicant will fund tactile paving at the existing Wykham Close junction via S106.
 - The applicant will fund 10 additional lighting columns along Church Lane via S106 which will need to be discussed with Newington Parish Council as it controls the lighting in this area.
 - The applicant will fund carriageway narrowing on Church Lane at its junction with High Oak Hill to assist pedestrian crossing movement and to help control vehicle speeds. The above 4 bullet points will encourage walking to school from the development and into Newington village centre.
 - Travel plan coordinator (TPC) to hold promotional events and distribute literature to encourage walking, and prepare and arrange for distribution of maps showing safe local walking routes as part of the Residential Travel Induction Pack.
 - TPC to establish cycling action plan that could include promotion of national bike week; buddy scheme for those not confident about cycling; promotional events and literature about cycling and health benefits to be arranged by TPC.
 - The Residential Travel Induction Pack will encourage public transport. Two new bus stops and shelters with low floor kerb access to be provided on London Road, plus the two aforementioned pedestrian crossings to aid access to bus services.
 - The applicant will fund 3 additional cycle stands at Newington Rail Station via S106 contributions.
 - TPC to identify car share scheme to promote to residents.
 - Each dwelling will have 32amp single phase electrical supply to allow for the future inclusion of an individual electric car charging point for each property.
- 9.11 These measures will be secured, if considered appropriate by KCC Highways and Transportation, by a mixture of the S106 agreement and conditions as required. The lack of identifiable highways harm is a positive factor that weighs in favour of the application because of the contribution this makes to the environmental strand of sustainable development.

Affordable Housing

- 9.12 30% Affordable housing has been offered by the applicant which equates to 38 affordable dwellings on site. The affordable housing statement gives an indicative mix

as a starting point for negotiations. The extra care facility does not require affordable housing to be provided because it has been demonstrated that it falls within use class C2. The indicative mix provides the 70%/30% tenure split required by the Council's SPD on developer contributions. The affordable dwellings would be evenly spread across the site in small clusters of 6-10 units with external appearances similar to the private dwellings. The submitted statement suggests affordable housing is secured by condition rather than S106 which is not the Council's policy. However, the offer accords with adopted and emerging local plan policy and is acceptable in my view. The social benefits of this element of the proposal are significant and should be afforded significant weight in the decision making process because of their contribution towards the social strand of sustainable development. The precise mix would have been subject to detailed negotiations had the Council been determining the application. This mix will need to include fully adapted wheelchair homes in accordance with Council policy and KCC has also requested one wheelchair adapted dwelling.

Need for Extra Care

- 9.13 The applicant has provided data to demonstrate that within Swale there is a significant existing shortage of extra care accommodation and that this is predicted to grow by 25% by 2020 and 79% by 2030. Given the widely known aging population in the country and the Swale specific data provided by the applicant, and no evidence to the contrary, I consider there to be a compelling need for the extra care facility. The social benefits of this are significant because it has the potential to allow older local people to stay in the area they know. This could potentially result in dwellings that have single occupants or low levels of occupancy being vacated and sold on for more efficient family occupation which represents the rationalisation of housing stock. The social benefits of this element of the proposal are significant and should be afforded significant weight in the planning balance. The economic benefits include the short term construction employment and the longer term employment within the facility which should be afforded significant weight in my view.

Serviced Land for Potential Doctors' Surgery

- 9.14 The applicant has included serviced land for a potential future doctors' surgery. The response from the NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups makes clear that a development of this size would not generate a need for a new GP surgery and instead seeks a contribution towards expansion of existing GP surgeries in the area which it states are at capacity. The views of the NHS diminish the weight to be afforded to this element of the proposal in terms of its social benefits and it is clear that the offer of the land does not actually provide a solution to the problem of a lack of GP capacity in the area by providing a building but it does provide the potential that it may one day be addressed. The serviced land could potentially one day be used to provide a GP surgery if further development within Newington comes forward to generate the demand. This element of the proposal certainly attracts some small weight in the decision making process because of the positive contribution it makes to the social strand of sustainable development.

Heritage

- 9.15 As detailed above, the former farm outbuildings of Pond Farmhouse are not listed buildings as previously thought. However, Pond Farmhouse, to the north, is grade II listed, now considered to be a historic operational/working link between the two sets of buildings and a clear visual link/connection that still exists between them and which plays an important role in providing a beneficial and appropriately contextual setting for the grade II listed building. The outbuildings are considered to be non-designated heritage assets and para 135 of the NPPF applies in this regard. I have sought to clarify the applicant intentions for these outbuildings be clarified but such information has not been provided. In my opinion whilst this information has not been provided it does not and should not prevent the determination of this application. The buildings in question do not fall within the application site and there is no harm done to them by the proposal, subject to the considerations below and to the imposition of a condition requiring that a management plan for the farm buildings be submitted to and approved in writing by the Local Planning Authority.
- 9.16 The indicative framework plan shows an open space separating the proposed dwellings from the listed building and the former farm outbuildings which is considered would be sufficient to prevent harm to the setting of the listed building and the non-designated heritage asset former farm outbuildings. Furthermore, a tree belt is suggested along the northern boundary of the dwellings to soften views around the listed building which can be secured under the landscaping reserved matter. I consider that the statutory test in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the associated policies of the NPPF and adopted and emerging local plans are passed. It is possible to draw such a different conclusion compared to the previous application because the outbuildings are now considered not to be listed buildings and the intervening green space between the buildings and grade II listed building would now be sufficient to prevent harm to its setting. The impact on designated and non-designated heritage assets would therefore be acceptable in my opinion. The lack of harm to heritage interests would be positive in terms of the environmental strand of sustainable development that should be afforded weight in the decision making process.

Ecology

- 9.17 The submitted ecological appraisal assesses the application site for protected species and the wider impact on surrounding designated nature conservation sites. As set out at paragraph 7.09, KCC Ecology do not raise objection to the findings of the survey and suggests that lighting be designed to protect bats. A contradiction within the report is highlighted but no additional information is required on the basis that the former farm buildings are not proposed to be demolished, open space will be created adjacent to the former farm buildings, and hedgerows would be retained. The submitted ecological appraisal agrees to provide a contribution per household towards the Strategic Access Management and Monitoring Strategy on the SPA and enhancement of local green infrastructure. Furthermore, the applicant has expressly agreed to pay the full SAMM tariff for each dwelling and a proportion tariff for the extra care facility. This would deal with the issue of increased recreational pressure on the SPA highlighted by Natural England and KCC Ecology. The proposed mitigation would not be in place before occupation of the proposal as requested by Natural England but it is unrealistic to expect this. Natural England considers the proposal can be screened out of the need for further assessment because it is unlikely to have significant effects on the sites. Natural England does not consider the SSSI to represent a constraint in determining this application. Subject to a condition requiring

ecological enhancements within the development, and in light of the comments of both consultees, the on-site and off-site ecological impacts of the proposal are acceptable in my opinion. A habitat regulations screening assessment has been carried out – and is appended - and concludes that the proposal is unlikely to have significant effects which means the application benefits from the presumption in favour of sustainable development set out on paragraph 14 of the NPPF and its associated footnotes.

- 9.18 The most significant trees on the site, namely those directly to the south of the former farm outbuildings, can be retained within the development. The remaining trees around the periphery of the site may also be retained within the final development, as would the field boundary hedges as far as possible. The loss of the hedgerow fronting London Road is regrettable but necessary to achieve appropriate highway improvements and would be replaced with a hedge to the south. This is acceptable from an arboricultural perspective in my opinion. The provision of 2.95ha of open space/ green infrastructure is considered to be a positive associated with the development that would benefit residents of the proposal and existing local residents that could also use this area. The lack of ecological and arboricultural harm, and the amount of proposed open space represent environmental positives that weigh in favour of the proposal.

Sustainable Drainage (SUDS)

- 9.19 KCC Sustainable Drainage Team considers that a SUDS scheme is technically achievable on site given the underlying ground conditions and requested additional detail of where appropriately sized drainage features might be incorporated within the development that ensures sufficient capacity is included for the proposed number of units. I would ordinarily have sought delegation to resolve this matter but in this instance I do not believe the lack of agreed SUDS is a reason for refusal as it appears to be technically achievable. This is an environmental positive that weighs in favour of the proposal.

Air quality, and noise and vibration

- 9.20 As set out at paragraph 7.02 above, the Council's Environmental Protection Manager raises no objection to the impact of the development on the AQMA in Newington. The level of third party objection in this regard is noted, but I am not in a position to dispute his findings given his expertise in the area, nor do I have any reason to doubt his conclusion that the impact is acceptable subject to the mitigation measures detailed in the submitted air quality assessment. The mitigation offered includes; contributions to highway improvements in order to reduce local traffic congestion; support for and promotion of car clubs; contributions to low emission vehicle refuelling infrastructure; provision of incentives for the uptake of low emission vehicles; financial support to low emission public transport options; and improvements to cycling and walking infrastructure. The applicant has offered each of these measures as part of the travel plan with the exception of incentives for the uptake of low emissions vehicles which is not considered necessary. KCC Highways and Transportation has indicated that it asked the applicant to explore providing contributions towards bus services to meet the goals of the travel plan and that this is still being explored and could take some time to report back on but that this specific detail can be negotiated as part of the S106. The travel plan objectives and air quality mitigation measures are broadly

identical and would have been secured through the S106 therefore no condition is required.

- 9.21 The applicant has provided an air quality assessment for the Rainham AQMA within Medway. Whilst I am still currently awaiting the removal of Medway Council's objection on air quality grounds, it is anticipated that this is possible given that the applicant has stated they are willing to mitigate any identifiable harm caused.
- 9.22 The applicants noise and vibration assessment highlights that noise mitigation measures may be required for the proposal, and that no vibration mitigation is required. The development framework plan has been amended since this report was produced but the Council's Environmental Health Manager has clarified that no vibration issues are considered to arise, nor are any measures required for the potential doctors surgery at this stage because this can be dealt with under subsequent application when the design is clarified, and there would not be any dwellings close enough to London Road under the revised development framework plan to warrant noise mitigation measures.
- 9.23 For these reasons, air quality, noise and vibration issues are considered acceptable in my opinion. The lack of harm in this regard is positive and contributes towards the environmental strand of sustainable development which weighs in favour of the proposal.

Loss of agricultural land

- 9.24 The proposed site comprises best and most versatile agricultural land (BMV = Grades 1, 2 and 3a), which would be permanently lost. Para. 112 of the NPPF – which is set out in full at paragraph 5.10 above - expects Councils to take into account economic and other benefits of BMV land and if the significant development of agricultural land is necessary, they should seek to use areas of poorer quality land. Emerging Local Plan policy DM31 also looks for the loss of BMV land to be avoided if possible.
- 9.25 Agricultural land of this scale and quality derives a number of economic and other benefits: food security and self-sufficiency; food quality; the economy; the environment and climate change; and the countryside. Economically, the value of agriculture is potentially very significant in the Swale economy and BMV is its most precious resource.
- 9.26 It is though accepted that it has already been necessary to release significant levels of agricultural land to meet development needs in the Borough and that this will potentially be the case for additional housing sites being sought to meet the Council's objectively assessed need under the emerging local plan.
- 9.27 However, although the use of agricultural land may be inevitable, it is not necessarily the case that the loss of BMV land at this scale is inevitable in cases where there is a shortfall in the land supply. It is important to point out that para 112 of the NPPF does not rule out the principle of development on BMV land. The recent Court of Appeal Decision in Suffolk Coastal District Council and Richborough Estates Partnerships LLP [2016] EWCA Civ 168 is a critical consideration in this regard because it provides clarity on the meaning and effect of para 49 of the NPPF regarding the definition of 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. The Courts decision states;

“33. Our interpretation of the policy does not confine the concept of “policies for the supply of housing” merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it– that policies of both kinds make the supply what it is.”

- 9.28 In my opinion, this Decision means that the Council’s emerging local plan policy DM31 would be considered out of date because it seeks to influence the supply of housing land by restricting the locations where new housing may be developed, to areas of low quality agricultural land. When reverting back to para 112 of the NPPF, the economic and other benefits of the land have been taken into account, but the loss of such a large area of BMV agricultural land certainly represents an environmental negative that is a cost of the development that weighs against it.

Minerals Sterilisation

- 9.29 The site is located within the Swale Borough Mineral Safeguarding Area map for brickearth, as defined by policy CSM5 of the emerging Minerals and Waste local plan for Kent. The submitted application seeks to demonstrate that the brickearth on site is not of economic value and that the extraction would not be viable or practicable in accordance with policy DM7 of the Minerals and Waste Local Plan. The applicant considers the deposits across the site to be thin and that a significant proportion of the site is indirectly sterilised by the surrounding residential area. Consequently, the brickearth deposits on the site are not considered to be of sufficient size to be viable nor do they have the ability to be made viable, in the applicant’s opinion. They also consider that alternatively, it is possible they may have been removed under a pre-existing planning permission. KCC Minerals objects to the applicant’s assertions and this has led to various responses from both the applicant and KCC Minerals with no conclusion reached.
- 9.30 The foreword to policy DM7 states that when proposals for non-minerals development within a mineral safeguarding area come forward, the need for such development will be weighed against the need to avoid sterilisation of the underlying minerals and the objectives and policies of the development plans as a whole will need to be considered when determining proposals. Policy DM7 itself states that permission will only be granted for non-mineral development that is incompatible with minerals safeguarding where it is demonstrated that, amongst others, material considerations indicate that the need for the development overrides the presumption for mineral safeguarding such that sterilisation of the mineral can be permitted following the exploration of opportunities for prior extraction.
- 9.31 In my opinion, this mineral safeguarding policy is to be afforded diminished weight because of the aforementioned Court of Appeal Decision as the policy seeks to prevent housing development on the land. Notwithstanding the above, DM7 acknowledges there is a balance to be struck here and given that there are in my

opinion material considerations that indicate the need for such development overrides the presumption for mineral safeguarding, I consider that the loss of potential brickearth deposits (noting that it is not known what the site actually contains) may be acceptable. In my opinion, the Council will be in a much stronger position to resist potential mineral sterilisation proposals once it has a demonstrable 5 year supply of housing land. The loss of potential minerals certainly represents an environmental cost of the development that weighs against the proposal but as set out above it is possible that the Council may reach the view that this harm is not sufficient to justify the application being turned down on this ground. In order to inform Members' assessment of this issue, the applicant has been asked to provide further information with particular regard to the practicability and viability of extracting the brickearth from this site. I will update Members at the meeting.

Public rights of way

- 9.32 KCC Public Rights of Way considers the impact on the public right of way within the application site to be acceptable including its junction with the proposed main street. KCC requests a safe crossing point over the A2 which is provided.

Archaeology

- 9.33 KCC Archaeology notes the rich archaeological potential in the area as the A2 is a known Roman Road corridor. A condition is requested and attached below to satisfactorily deal with the issue.

Developer contributions

- 9.34 The required developer contributions have not been finalised at this point and the appeal against non-determination means that these matters will be dealt with at the appeal. The following contributions were requested at the time of writing and could be subject to change;

Kent County Council

Primary Education £2360.96 per dwelling x 126 = £297,480.96 Towards Regis Manor Phase 2 expansion.

Secondary Education £2359.80 per dwelling x 126 = £297,334.80 Towards Sittingbourne Academy Phase 2 expansion.

Community Learning £60.43 per dwelling x 126 = £7614.18 Towards new equipment at Sittingbourne Adult Education Centre

Youth Service £37.58 per dwelling x 126 = £4735.08 Towards new equipment at New House Youth Centre, Sittingbourne

Libraries £227 per dwelling x 126 = £28,602.00 Towards fitting out costs of new Library in Sittingbourne Hub and bookstock for mobile library service attending at Newington.

Social Care £63.33 per dwelling x 126 = £7979.58 Towards Changing Place Facility in Sittingbourne Hub

Kent Highways- has requested that the developer explore making contributions towards local bus services in order to retain and possibly expand services to meet the aims of their travel plan. This matter was to be left to the negotiation stage of S106.

Swale Borough Council;

Greenspaces- If the applicant is to provide and manage the proposed greenspace and play area themselves the Council only requires details of the play equipment. If the Council is to provide the greenspace and play area, a contribution of £861 per dwelling is required. There would need to be details of facilities such as litter and dog bins. If the land is to be transferred to the Council a 10 year commuted sum maintenance contribution is required.

SPA Mitigation- £223.58 per dwelling with a proportional contribution for the Extra Care facility based on residents ability to recreate on the SPA which was unresolved.

Wheelie Bins- 2 per dwelling = £75 per dwelling, with potential for larger more expensive Euro bins to be provided for the extra care facility.

Highway Improvements - £88,935.

Swale Borough Council would charge a 5% monitoring fee of the total amount of all contributions.

In addition, and further to Paragraphs 7.01 and 9.12 above, the Section 106 agreement will also need to make appropriate provision for **affordable housing**.

Medway Council;

Secondary Pupils- £286,322.40

Sixth Form Pupils- £83,720

I have contacted both Medway and KCC to ask whether they have coordinated their responses so that the applicant does not get charged twice for the same school places but a combined response has not yet been received.

The NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups- requests a contribution of £151,920 (reduced to reflect amended 126 dwellings proposed) towards GP facilities in the area but did not demonstrate CIL Regulation compliance in the request, which I have sought. This amount is based on its assumption that each dwelling would contain 2.4 people and each extra care unit would contain 2 people and it charges £360 per person.

- 9.35 It is not sensible to try and provide a total amount of developer contributions requested because this will inevitably change, potentially quite significantly. This issue would have been resolved through normal negotiations of the S106 if the appeal had not been submitted, and should not form a reason for refusal.

Utilities

- 9.36 UK Power Networks raises no objection with regard to electricity supply. Southern Gas Networks raises no objection with regard to gas supply but provides general guidance for the applicant. Southern Water initially provided comments that made no reference to the Utility Law document submitted with the application. I sought clarification from Southern Water as to whether this document had been considered by them. Further comments have been received essentially reiterating its initial request for drinking water, surface water drainage and foul sewerage provision at the site to be dealt with by pre-commencement condition. Surface water is being dealt with under the SUDS but drinking water and foul sewage are dealt with by condition below. It is considered that this condition is justified because Southern Water has clarified that if the developer utilises their statutory right to connect to public sewer the necessary capacity upgrades may not keep pace with the development and lead to flooding problems which should clearly be avoided. Relevant utility companies raise

no objection to the proposal and this is not considered to be an impediment to development.

Sustainability measures

- 9.37 The Council's Climate Change officer has raised concerns about contradictions within the submission about what sustainability measures would be included within the development. However, it is clear from the NPPF - Planning Update: Written statement - HCWS488 that the code for sustainable homes has been abolished and the Council has no basis to attach conditions requiring the achievement of a particular level under the Code. However, it is appropriate to require the development to incorporate sustainable design and construction measures in respect of the proposed dwellings and, in respect of the care home, a level under the BREEAM system. Such conditions are set out below.

Whether sustainable development?

- 9.38 In terms of the three strands of sustainable development - economic, social and environmental- paragraphs 7 to 9 of the NPPF expects developments to seek improvements across all three.
- 9.39 The additional dwellings including affordable dwellings and the extra care facility represent social gains. Some limited weight is to be given to the serviced land for a doctors' surgery. The construction phase and longer term employment generation from the extra care facility are economic gains but these are partially offset by the loss of agricultural land and potential mineral reserves (subject to clarification) and their attendant economic benefits. The highways impacts are now acceptable. As a result, the proposal would result in some economic gains.
- 9.40 In terms of environmental considerations, the visual and landscape impacts are considered acceptable, but there would be a loss of BMV agricultural land and potential mineral deposits (subject to clarification). Heritage, transport, air quality and ecological impacts have been demonstrated to be acceptable. Therefore, the proposal goes provide environmental gains overall.
- 9.41 Overall, the proposal manages to secure gains across all three strands and as such represents sustainable development. It is concluded that they comply with policy SP1 of the adopted local plan and policies ST1 and ST5 of the emerging local plan. In my opinion and subject to clarification of the implications for brickearth extraction, the adverse impacts of the development would be significantly and demonstrably outweighed by the benefits given that the two significant costs associated with it, namely loss of agricultural land and potential minerals, do not amount to reasons for refusal in their own right.

10.0 CONCLUSION

- 10.01 For the reasons stated above, the proposed development would represent sustainable development and is acceptable.

- 11.0 RECOMMENDATION** – This application is, as explained above, the subject of a planning appeal. As such the application will not be determined by Swale Borough

Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision.

Had the appeal not be submitted, and subject to further information in respect of brickearth, the recommendation would have been to grant planning permission subject to a Section 106 Agreement and conditions as set out below.

The following conditions are recommended;

CONDITIONS to include

- 1) Details relating to the layout, scale and appearance of the proposed buildings, the access thereto (excluding the access details for the vehicle access from London Road which have already been provided) and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 4) The landscaping details submitted pursuant to condition 1 above shall include a tree belt along the north boundary of the extent the dwellings to be constructed and a replacement hedge to the south of the visibility splays of the new vehicle access on to London Road. The agreed measures shall be incorporated into the development in accordance with a development phasing schedule to be agreed in writing.

Reason: In order to soften the impact on the setting of the grade II listed building and the former farm outbuildings to the north and to mitigate for the necessary removal of the existing hedge along London Road.

- 5) The details submitted pursuant to condition 1 shall include a lighting design for the site and shall be designed to minimise the impact on bats. An ecologist shall be involved in the design and it shall accord with the Bat Conservation Trusts Bat and Lighting in the UK guidelines. The agreed measures shall be incorporated into the development in accordance with a development phasing schedule to be agreed in writing.

Reason: In order to protect roosting, foraging and commuting bats.

- 6) The details submitted pursuant to condition 1 shall include details of on site ecological enhancements. The agreed measures shall be incorporated into the development in accordance with a development phasing schedule to be agreed in writing.

Reason: To secure ecological enhancements.

- 7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of;
- (i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
 - (ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

- 8) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times :-
Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 9) No construction work and associated deliveries in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times :-
Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 10) 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.

- 11) Prior to the commencement of development details shall be submitted (or as part of reserved matters) for the installation of electrical services and fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process. The development shall not resort to the erection of distribution poles and overhead lines, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 no distribution pole or overhead line shall be erected other than with the express consent of the Local Planning Authority.

Reason: In order to secure appropriate high quality communications infrastructure.

- 12) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of through infiltration features designed and constructed with due regard to ground and groundwater risks.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions and to protect vulnerable groundwater resources.

- 13) No building hereby permitted shall be occupied until 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:
- (i) a timetable for its implementation, and
 - (ii) 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.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions and to protect vulnerable groundwater resources.

- 14) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority (in consultation with the Environment Agency); this shall only 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.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions and to protect vulnerable groundwater resources.

- 15) No work shall commence on the development site until the off-site highway works shown on the approved drawings have been carried out in accordance with a design and specification to be approved in writing with the Local Planning Authority and to be fully implemented.

Reason: In the interests of highway safety and amenity.

- 16) Before any work is commenced on site, a Construction Management Plan, including details of delivery routes and the timing of these, shall be submitted to and approved in writing by the Local Planning Authority and the development shall not proceed other than in accordance with the approved programme.

Reason: In the interests highway safety and amenity.

- 17) 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.

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

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

- 19) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway details of which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and convenience.

- 20) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with proposals to be submitted to, and agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity and road safety.

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

Reason: In the interests of highway safety.

- 22) The details submitted in pursuance of reserved matters shall show adequate land reserved for parking in accordance with the Approved County Parking Standards and, upon approval of the details this area shall be provided, surfaced and drained before any building is occupied and shall be retained for the use of the occupiers of, and visitors to, the premises. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

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

- 23) The proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads are laid out and constructed in a satisfactory manner.

- 24) Before the first occupation of a dwelling / premises the following works between that dwelling / premises 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.

- 25) Prior to the commencement of development details of the proposed means of water supply and foul water disposal and an implementation timetable shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and timetable.

Reason: To ensure sufficient sewerage capacity to serve the development.

- 26) The areas shown on the approved drawings as proposed open space including proposed equipped area of play and community orchard shall be reserved for the general amenity of the area. Play spaces shall be surfaced and equipped with play equipment, in accordance with a schedule agreed by the Local Planning Authority before development is commenced and shall be provided before the last dwelling is occupied; no permanent development whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or not shall be carried out in the areas so shown without the prior written approval of the Local Planning Authority.

Reason: To ensure that these areas are made available in the interests of the residential amenities of the area.

- 27) Prior to the commencement of development a scheme outlining the phasing of development, including site layout plan identifying land uses such as formal and informal open space and infrastructure, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing scheme.

Reason: In order to secure the appropriate phasing of the development.

- 28) The extra care facility hereby permitted shall be used solely for this purpose and for no other purpose, including any other purposes in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

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

- 29) The development shall proceed in accordance with the following approved plans; site location plan 6363-L-01 rev C, development framework plan 6363-L-03 rev I, Ashley helme associates 1466/01 rev A.

Reason: For the sake of clarity and in the interests of proper planning.

- 30) None of the dwellings hereby approved shall be occupied until a Management Plan for the Pond Farm outbuildings has been submitted to and approved in writing by the Local Planning Authority. The buildings shall then be managed in accordance with the plan in perpetuity.

Reason: In the interests of safeguarding these heritage assets.

- 31) The care home building hereby approved shall be constructed to BREEAM 'Very Good' Standard or an equivalent standard and prior to the use of the building the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved unless otherwise agreed in writing by the Local Planning Authority.

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

- 32) The dwellings hereby approved shall incorporate sustainable design and construction measures, and no development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction

techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

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

33) The details submitted in pursuance of condition (1) above shall be in accordance with a Development Brief that shall first have been agreed in writing by the Local Planning Authority and which shall include the following:

- (a) Details of the road layout for the site;
- (b) A comprehensive network of segregated pedestrian and cycle routes;
- (c) An overall landscape strategy for the application site;
- (d) A strategy for the architectural treatment of the buildings on the site, including elevational treatment, roof design and the palette of colours;
- (e) A lighting plan for the site, to include details of the lighting columns, the type and luminance of the lighting units with glare shields and details of lux levels, both inside and outside the site;
- (f) A strategy for dwelling storey heights;
- (g) A strategy for cycle parking.

Reasons: In the interests of promoting a consistent quality of development, sustainable development, ecological protection and enhancement, and of visual and landscape amenity.

INFORMATIVES

1. The clearance of vegetation from the site should take place outside the breeding bird season (March to August inclusive) or following a check by an experienced ecologist.
2. The applicant is advised to contact KCC Public Rights of Way to discuss its requirements for works to the Right of Way on site by telephoning 03000 418142.
3. 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.

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.

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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 provided formal pre-application advice.
Amendments were sought from the application in order to overcome identified problems.

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.

APPENDIX

HABITATS REGULATIONS ASSESSMENT SCREENING

Context

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

For proposals likely to have a significant effect on a European site, the Conservation of Habitats and Species Regulations (2010) requires the Council to make an appropriate assessment of the implications for the site. Para. 119 of the NPPF states that “*The presumption in favour of sustainable development ... does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.*”

Given the scales of housing development proposed around the North Kent SPAs, the North Kent Environmental Planning Group (NKEPG) commissioned a number of reports to assess the current and future levels of recreational activity on the North Kent Marshes SPAs and Ramsar sites. NKEPG comprises Canterbury, Dartford, Gravesham, Medway and Swale local authorities, together with Natural England and other stakeholders. The following evidence has been compiled:

- Bird Disturbance Study, North Kent 2010/11 (Footprint Ecology).
- What do we know about the birds and habitats of the North Kent Marshes? (Natural England Commissioned Report 2011).
- North Kent Visitor Survey Results (Footprint Ecology 2011).
- Estuary Users Survey (Medway Swale Estuary Partnerships, 2011).
- North Kent Comparative Recreation Study (Footprint Ecology 2012).
- Recent Wetland Bird Surveys results produced by the British Trust for Ornithology.
- Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014).

In July 2012, an overarching report summarised the evidence to enable the findings to be used in the assessment of development. The report concluded (in summary):

- There have been marked declines in the numbers of birds using the three SPAs.
- Disturbance is a potential cause of the declines. The bird disturbance study provided evidence that the busiest locations support particularly low numbers of birds.
- Within the Medway, the areas that have seen the most marked declines are the area north of Gillingham, including the area around Riverside Country Park. This is one of the busiest areas in terms of recreational pressure.
- Access levels are linked to local housing, with much of the access involving frequent use by local residents.
- Bird disturbance study - dog walking accounted for 55% of all major flight observations, with a further 15% attributed to walkers without dogs along the shore.

- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance.
- Development within 6km of the SPAs is particularly likely to lead to increase in recreational use.

Natural England's advice to the affected local authorities is that it is likely that a significant effect will occur on the SPAs/Ramsar sites from recreational pressure arising from new housing proposals in the North Kent coastal area. The agreed response between Natural England and the local authorities is to put in place strategic mitigation to avoid this effect – a 'strategic solution.' This provides strategic mitigation for the effects of recreational disturbance arising from development pressure on international sites and will normally enable residential development to proceed on basis of mitigation provided avoiding a likely significant effect.

This strategic approach is set out in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). It will normally require the creation of on-site mitigation, such as the creation of open space suitable for dog walking and, secondly, via payment of a dwelling tariff for off-site impacts. The money collected from the tariff would be used by the North Kent Councils and its partners for mitigation projects such as wardening, education, diversionary projects and habitat creation. The policy context for such actions is provided by policies CP7 and DM28 of the ELP.

Associated information

The applicant's ecological appraisal dated October 2014 contains some information to assist the HRA. These matters have been considered, particularly those contained in Section 4. However, the appraisal does not include sufficient information to enable the HRA to be undertaken in its own right. As an example, it does not appear to contain a full assessment of the evidence collected by NKEPG but it does commit the applicant to a per dwelling payment for off-site mitigation as recommended by The Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). Natural England's letter to SBC has also been considered; in particular that they have raised no objections to the proposals in terms of their impact on designated nature conservation sites. In advising SBC on the requirements relating to the Habitats Regulations Assessment, and to assist it in screening for the likelihood of significant effects, based upon the information provided, Natural England offered the following advice:

- The proposal are not necessary for the management of the European sites.
- That subject to an appropriate contribution being made to strategic mitigation, the proposal is unlikely to have a significant effect on any of the European sites mentioned above, and can therefore be screened out from any requirement for further assessment.
- Proportionate contributions for the extra care facility if they include permanent staff accommodation and or the residents are able to recreate on the SPA.

The applicant has confirmed in section 4.12 of the Ecological Appraisal dated October 2014 submitted in support of the application that they will make a financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy in accordance with the recommendations of the North Kent Environmental Planning Group. This strategic mitigation will need to be in place before the first dwelling is occupied. As detailed in their letter of the 6 January 2015, Natural England has confirmed that a suite of strategic measures similar to those set out in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy will provide appropriate mitigation.

However, they consider it is up to the local authorities to ensure that appropriate measures are in place to allow the strategic mitigation to be delivered. This would include consideration of the appropriate tariff.

The Assessment of Pond Farm

The application site is located within some 2-2.5 km of a popular access point Medway SPA at Lower Halstow. The statement in para. 4.7 of the applicant's Ecological Appraisal is not accepted. Whilst there is not a direct point to point footpath between the application site and the SPA, a mixture of footpaths and rural lanes make the SPA readily assessable on foot at Lower Halstow. In any event, recreational impacts are equally likely to occur as a result of visitors arriving by car. This assessment has taken into account proposals for on-site mitigation, such as dog-walking areas and the availability of other inland public footpaths close to the site. Whilst these would no doubt supplement many day-to-day recreational activities, the coastal SPA is nevertheless considered likely to be a likely draw of activity for residents and as such these factors will not be sufficient to prevent off site recreation taking place on the SPA.

Conclusions

Taking a precautionary approach, given the applicants commitment to provide on site mitigation in the form of greenspace and financial contributions towards the SAMM it leads to the conclusion that the proposals would not give rise to likely significant effects on the SPA. It is concluded that the proposals can be screened out for purposes of Appropriate Assessment. These would not lead to likely significant effects on the SPA.

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APPENDIX 2

Planning Committee

28 April 2016

2.5 REFERENCE NO – 15/510595/OUT		
APPLICATION PROPOSAL		
Outline application with all matters reserved (except for the details of a vehicular access point from London Road, including the widening and realignment of the A2) for residential development of up to 126 dwellings (including 30% Affordable), plus 60 units of Extra Care (Use Class C2), an allocated 1/4 acre of serviced land for potential doctors surgery, planting and landscaping, informal open space, children's play area, surface water attenuation, and associated ancillary works (Resubmission of 15/500671/OUT).		
ADDRESS Land Off London Road Newington Kent		
WARD Hartlip, Newington and Upchurch	PARISH/TOWN COUNCIL Newington	APPLICANT Mr Gladman Developments

Councillor Mike Baldock raised concern that a representative from Hartlip Parish Council had not been able to speak on this item which he considered was not consistent with the Council's Constitution. The Chairman explained that the application site was within the parish of Newington and suggested that the Member speak to the Monitoring Officer outside of the meeting about his concern.

The Major Projects Officer outlined the application and placed it in context with the original scheme (reference 15/500671/OUT) and drew attention to the tabled papers which included: planning and environmental health officers response to Councillor John Wright's emails; KCC Highways and Transportation response to Councillor John Wright's emails; a new letter of objection from Newington Parish Council and the officer update.

The Major Projects Officer drew attention to the tabled officer update and the various additional representations that had been received from third parties, the additional information in respect of brick-earth and in respect of air quality, and the new comments from technical consultees: KCC Ecology, KCC Developer Contributions, Highways England, Kent Police, UK Power Networks and Southern Gas Networks.

The Major Projects Officer concluded that the information received about brick-earth did cast doubt on the practicability and viability of extracting brick earth prior to development of this site. Whilst it was possible to view the failure to extract such deposits as a negative economic cost, the wider benefits of the proposal outweighed the harm in this regard in his view. Officers remained of the view that the development was acceptable and that the Planning Inspectorate should be advised accordingly.

Parish Councillor Stephen Harvey, Newington Parish Council, spoke against the application.

Mr Richard Knox-Johnson, representing the Council for the Protection of Rural England, spoke against the application.

At this point the Chairman invited questions from Members on the tabled papers.

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In response to queries about comments raised by Newington Parish Council, the Major Projects Officer drew attention to pages 117 and 118 of the Committee report which set out why officers considered the proposal was sustainable. He noted that Pond Farm would be taken out of agricultural use, but officers had considered that the benefits of the proposal outweighed the harm in that regard.

The KCC Highways and Transportation Officer reported that whilst there may be an extra 250 vehicle movements from the application site it would not all be leaving or accessing the site at the same time. He stated there would be an additional 60 movements through the village at peak times and 1,500 vehicles currently pass through Newington in each of those peak hours, so the increase associated with the development therefore amounted to a relatively small amount.

In response to queries from Members, the Major Projects Officer explained that the applicants had lodged two appeals for non-determination, this application and another one which was for 330 properties at the site (and relating to 15/500671/OUT, which Members considered in August 2015). The Planning Inspector was receiving representations on how to manage both applications and there may be a public inquiry in June 2016 and although this was confirmed in respect of 15/500671/OUT it was not yet known whether 15/510595/OUT would also be considered at that Inquiry. The Major Projects Officer stated that in terms of appeal costs the Committee needed to be confident that they had behaved reasonably when considering the application and made their decision on material planning grounds.

The Head of Planning Services reminded Members that they needed to consider this application on its merits.

With regard to Section 106 monies for education going to Regis Manor, the Major Projects Officer advised that during the appeal Members could request this went to the local school in Newington, though evidence would need to be provided in order to justify such a request.

The Chairman moved the officer recommendation to advise the Planning Inspectorate that the Council supported the proposals and this was seconded.

A Ward Member spoke against the application and raised points which included: have some sympathy with planning officers as there is so much information that needs to be considered and provided with the application; need to consider the outcomes of the emerging Swale Local Plan (Bearing Fruits 2031) and KCC Waste and Minerals Plan announced on the 19 April; lights from vehicles leaving the site would have an adverse impact on properties in London Road; the Council's Landscape and Visual Impact Consultants recommend refusal this has been ignored by officers; need to consider the results of the KCC Waste and Mineral Plan recently published; need to consider cumulative impact of development as this is a material planning consideration; no Section 106 monies for local school or recreation area; traffic assessment was not carried out correctly; vehicle movements would double; does not comply with the National Planning Policy Framework (NPPF); does not improve the quality of the village; and a lot of questions remained unanswered.

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Members raised concerns which included: contrary to the emerging Local Plan; site lies within an important strategic gap would be undermining our own Local Plan; the recently published KCC Minerals and Waste Plan states that a 25-year supply of brick earth is essential and this type of development is fundamental for promoting brick earth reserves to be used; bullet point five of paragraph 17 of the NPPF does not apply and there is case law to support this; Council's climate Change Officer has concerns why have officers ignored this advice; consider that the developer is trying to 'blackmail' the Council by stating that if we approve this they will not pursue the appeal for their other application; the proposed third lane of traffic should be removed as it will cause problems; the Section 106 monies should not be used for Key Street roundabout but Church Road in Newington which has issues with on-street parking; and why is the Council approving applications like this, we should be listening to the public?

Councillor Mike Henderson proposed the following reasons for refusing the application if the motion to approve were to be lost:

- In principle the application is over-intensive for Newington and an expansion of 20% to the size of the village is not sustainable;
- Loss of potential brick earth resource;
- Increased pressure on the highways and therefore an increase in pollution and impact on the Air Quality Management Area;
- Loss of best and most versatile high quality agricultural land;
- Not economically sustainable (contrary to the NPPF);
- Not environmentally sustainable (contrary to the NPPF). The Council's Environmental Protection Officer has concerns.
- Not socially sustainable;
- Contrary to Policies E1, E6, E7 and H2 of the adopted Local Plan;
- Loss of listed building and heritage assets;
- Inadequate Travel Plan

In accordance with Procedure Rule19(5) a recorded vote was taken on the motion to approve the application and voting was as follows:

For: Councillors Roger Clark and Bryan Mulhern.

Against: Councillors Mike Baldock, Cameron Beart, George Bobbin, Andy Booth, Richard Darby, Mike Dendor, Mark Ellen, Sue Gent, Paul Fleming; Mike Henderson, Lesley Ingham; Peter Marchington, Colin Prescott and Ben Stokes.

Abstention: Councillor James Hunt

The motion to approve the application was lost.

Councillor Mike Henderson moved a motion to refuse the application. This was seconded by Councillor Mark Ellen.

At this point the Head of Planning Services used his delegated powers to 'call-in' the application.

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Resolved: That as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance, determination of the application be deferred to the next meeting of the Committee, when the Head of Planning Services should advise Members of the prospects of such a decision if challenged on appeal and if it becomes the subject of a costs application.

SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

26 MAY 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

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 – 26 MAY 2016

PART 1

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

1.1 REFERENCE NO – 16/500948/MOD106			
APPLICATION PROPOSAL			
Discharge of Section 106 Agreement made between Hyde Housing and Swale Council on 11th February 1994 - The Charges Register on the title; Part C: Charges register 1-3. This also includes reference to sell the property within social housing. Such Units to be utilised for such social and special needs housing whilst the application land is owned by a registered housing association			
ADDRESS 58 Whiting Crescent Faversham Kent ME13 7WB			
RECOMMENDATION - Approve			
SUMMARY OF REASONS FOR RECOMMENDATION			
To allow the owners to dispose of this damaged property and re-invest the proceeds in affordable housing.			
REASON FOR REFERRAL TO COMMITTEE			
Concerns express by Ward Councillors			
WARD St Ann's	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Hyde Housing Group	
DECISION DUE DATE 29/03/16	PUBLICITY EXPIRY DATE 03/03/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/93/747	80 dwelling units for social and special needs housing for Hyde Housing Association, with Section 106 Agreement to retain them as social and special needs housing whilst owned by an RSL	Approved	11/2/1994

1.0 DESCRIPTION OF SITE

1.01 This application relates to a modern semi-detached house set within a modern estate of similar dwellings. It on an estate of social and special needs housing and is owned by the applicants, Hyde Housing Association.

1.02 The house is currently boarded up but externally otherwise seemingly intact. However, photographs of the interior show damage to ceilings, walls, window units lying against the wall, damaged kitchen units and plumbing, and rubbish and discarded furniture in the garden. The owners have prepared a schedule of necessary repairs relating to kitchen, bathroom, boiler, heating and hot water, re-wiring,

re-decoration, garden fence and gate, and replacement windows/doors which total over £30,000.

- 1.03 Two nearby similar properties at 77 and 85 Whiting Crescent are also boarded up at present.
- 1.04 The house was built under the above 1994 approved planning permission as part of an 80 unit social and special needs (disabled persons) housing development at a time when there were 946 people on the housing waiting list for Faversham, including 209 families in “great need”. At the time the land was zoned for business development and the Town Council and many others opposed the development.
- 1.05 From the original committee report it is evident that there had been little interest in the site for commercial development (as has been common to many sites in Faversham over many years) and residents of new housing on adjacent land had expressed concern over possible commercial development on the land.
- 1.06 The Council’s Principal Housing Officer was satisfied that there was demand for low-cost housing at Faversham which supported the development; and the Council had decided to allocate the site for social housing in the forthcoming 1994 draft Local Plan. However, funding was then available which would not remain available to suit the Local Plan’s timescale and the decision to grant planning permission immediately and “swiftly” as a departure from the then current Local Plan was taken.
- 1.07 There are quite rightly no tenancy conditions within the planning permission, but the tenancy issues are properly secured via a related Section 106 Agreement which requires that the housing is “to be utilised for such social and special needs housing whilst the application land is owned by a registered housing association”.
- 1.08 It seems that although this does not actually prevent wholesale sale of the estate, there were (and remain) established procedures for safeguarding such properties from sale on the open market.

2.0 PROPOSAL

- 2.01 This request first arose in August 2015 when Hyde Housing Association contacted our Housing Team to say that they wished to dispose of the property, but that they had noticed the “planning restriction”. They quoted the description of development according to the planning application, and seemed to believe that this meant that the use of the property was restricted to social housing. They asked if they could remove the property from the planning permission. Apparently our Housing Team agreed (October 2015) but the formality of the Section 106 Agreement then arose – this issue had never arisen before in terms of our Housing Team’s role.
- 2.02 Initial legal advice was that planning permission is not required as the use of the property would not change and there are no relevant tenancy related planning conditions. However, the (slightly ambiguous) wording of the Section 106 Agreement means that the properties should be used only for special or special needs housing “*whilst the application land is owned by a registered social landlord*”, and whilst Hyde retain the remainder (or any part) of the estate (application land) it means that a variation to the Section 106 Agreement is necessary.
- 2.03 Hence the application to vary the Section 106 Agreement.

- 2.04 The application was initially supported by a copy of the Section 106 Agreement, a copy of the original planning permission, a copy of a letter from the Homes and Communities Agency (HCA) accepting sale of the property. On this basis the application form suggests that the Section 106 Agreement is no longer relevant.
- 2.05 I have sought clarification for the applicant’s intention to dispose of the property and it boils down to the fact that they have a policy of disposing of properties if repairs total over £10,000. The applicants have also submitted a report saying that they have decided that it is uneconomical to repair the house; and that they have considered alternatives such as Affordable Rent, or transfer to another RSL. The £10,000 policy limit is contained within the report and described as a key criteria for disposal. It is made clear that proceeds of the sale would be re-invested in local affordable housing.
- 2.06 Apparently, the repair costs are not insured, and the costs of repairs would not be justified by likely new rental income. In short, they would expect to gain a net £47k over the next 60 years, but sale might yield an immediate £70k sum.
- 2.07 I am told that at number 85 Whiting Crescent the costs of repairs do exceed £10,000 but that the applicants will be re-letting this unit.
- 2.08 It is unusual for the Planning Department to be involved in a disposal of affordable housing as there are already well established procedures that our Housing Team deal with for the Council’s views to be canvassed. However, this is an unusual case where the estate was allowed as an exception to normal planning policy and is all specifically designed social and special needs affordable housing, not simply some units forming part of a mixed tenure scheme. The house sits squarely within the estate and is attached to another house.

3.0 PLANNING CONSTRAINTS

Environment Agency Flood Zone 2
 MOD Thurnham MOD Safeguarding Directive Thurnham
 MOD Thurnham MOD Safeguarding Directive Thurnham
 Section 106 or 52 Agreement SW/04/0875
 Section 106 or 52 Agreement SW/93/0747
 Thurnham Exclusion Zone Thurnham, Kent
 Thurnham Exclusion Zone Thurnham, Kent
 Thurnham Wind Station THURNHAM WIND SAFEGUARDING

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF):
 National Planning Practice Guidance (NPPG):
 Development Plan: Saved policies H2, H3 of the Swale Borough Local Plan 2008.

5.0 LOCAL REPRESENTATIONS

- 5.01 None

6.0 CONSULTATIONS

- 6.01 The Town Council has not commented on the matter

- 6.02 I have consulted both Ward Councillors and the adjacent Ward Councillor for Priory Ward, with copies of interior photographs and the applicant's evidence of their wish to dispose due to the high repair costs.
- 6.03 Councillor Cosgrove has been critical of the plan to sell the property and considers the repair estimates to be unrealistically high. He is worried about this approach being taken on their other properties, including one nearby that is boarded up.
- 6.04 Councillor Kay supports retention of the property and its repair by the applicants.
- 6.05 Councillor Henderson (adjacent Ward Councillor) does not oppose sale of this one unit, but does not wish to see this becoming more widespread.
- 6.06 Our Strategic Housing and Health Manager has already agreed the sale of this property due to the high repair costs, before she was aware of the Section 106 issue. She recognises that this will result in the loss of one affordable unit at Faversham, but confirms that the revenue raised would be put back into new build affordable housing within the Borough. I also understand that the likelihood is that the property would be purchased and developed by a private landlord and used as rented housing.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for application 16/500948/MOD106
- 7.02 Section 106 Agreement dated 11 February 1994
- 7.03 Planning permission SW/93/747 dated 11 February 1994

8.0 APPRAISAL

- 8.01 This is an unusual application. The estate was clearly built for affordable housing as an exception to normal policy at the time. A clear attempt was made to secure that objective in the long term, and this is working.
- 8.02 The loss of an affordable house is always regrettable, and this one especially so as it is not old, nor is it unsuitable or remote. It also seems highly undesirable to take one house out of a comprehensively managed estate and sell it off, as this will inevitably bring about management difficulties for the applicants.
- 8.03 Accordingly, I have grave reservations about this sale against the clear backdrop of high housing need in Faversham. Local Members are also concerned as stated in the above section.
- 8.04 On the other hand, the management difficulties would be the problem for the applicants, and if funds are re-invested it might have a positive effect on affordable housing provision. Further, the house would not be lost entirely, and the sale may mean that it becomes available for occupation far sooner, possibly at a rent level similar to those of its neighbours, or at least one reflecting its location within a wider area of affordable housing.
- 8.05 To refuse the application may lead to the property remaining empty for a protracted period and will make the Council look inflexible and unrealistic. I am clearly advised by our senior housing officer that this is an accepted form of re-investment, with the private sector bearing the repair costs. I am not inclined to ignore this expert advice. I

understand that the applicants must have some criteria for assessing their response to such events and that they are best placed to make such decisions.

8.06 I am also mindful that the HCA have agreed the sale, and the Council has no good evidence that this decision was unsoundly taken.

8.07 I am advised that at least no.85 is being re-let despite extensive damage and I hope that this will also apply to no.77 - I am seeking confirmation from the applicants.

9.0 CONCLUSION

9.01 For the reasons set out above but with some reluctance I have concluded that the Council should not stand in the way of the sale of this sale and that the existing legal agreement should therefore be amended accordingly.

10.00 RECOMMENDATION

10.01 APPROVE – this application to modify the terms of the existing Section 106 agreement and that I should instruct our legal team to negotiate the appropriate variation to allow just this one property to be sold.

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

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PLANNING COMMITTEE – 26 MAY 2016

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 16/501352/FULL			
APPLICATION PROPOSAL Change of use to exhibition space with ancillary retail use on the ground floor and B1 office use on the 1st floor			
ADDRESS 12 Market Place Faversham Kent ME13 7AE			
RECOMMENDATION: Approve			
SUMMARY OF REASONS FOR RECOMMENDATION: Application is an exceptional case; not a precedent and would be complimentary to the vibrancy and vitality of the town centre			
REASON FOR REFERRAL TO COMMITTEE: Number of objections and Member call - in			
WARD Abbey	PARISH/TOWN Faversham Town	COUNCIL	APPLICANT Faversham Town Council AGENT Sell Wade Consultants
DECISION DUE DATE 20/04/16	PUBLICITY EXPIRY DATE 20/04/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/14/0495	Change of use from A1 (Retail) to A1 (Retail) & A3 (Restaurant)	Withdrawn	11.06.2014
14/505083/FULL	Change of use from retail (class A1) to a coffee shop (mixed A1/A3 use)	Withdrawn	24.12.2014
15/502734/FULL	Change of use from A1 (Retail) to A3 (Restaurant) (Resubmission).	Refused	25.05.2015
<i>Summarise Reasons</i> Contrary to Policy			

1.0 DESCRIPTION OF SITE

1.01 The development site is prominently located in central Faversham opposite the town's Guildhall. The site is a grade II listed building within the Faversham Core Shopping Area and has been in continuous retail use for many years, latterly as a shoe shop for a multiple high street retailer, with first floor storage and ancillary accommodation. Since the closure of the shoe shop the retail unit has been, until quite recently, occupied by a charity as a retail outlet, but I understand that the property is now empty again.

1.02 The unit has a wide and attractive frontage, albeit with a poor quality shop-front, and is a prominent feature within the Market Place locality. The shop has front and rear access and is one of the larger units in the vicinity.

2.0 PROPOSAL

2.01 The proposal is for the change of use of the building for Faversham Town Council, which wishes to use the first floor of the building as offices, leaving the ground floor as a visitor centre. However, the main attraction of the property will be the display of Faversham's copy of Magna Carta and other historical charters granted to the town during the medieval period, which will be displayed on the ground floor of the building. No building works are envisaged at this stage.

2.02 A small element of retail use will remain at ground floor level, with a small area devoted to the sale of publications, souvenirs, gifts, etc.

2.03 The application is accompanied by a Design and Access Statement, a Heritage Statement, and a business plan. The Design and Access Statement explains that no buildings works are included within this application; the proposal is solely for a change of use.

2.04 The business plan includes the following observations:

'The outline aims for the project are as follows:

- *The first floor would provide the office accommodation for the Faversham Town Council staff and the ground floor would provide an exhibition space, with retail.*
- *The exhibition would be manned by volunteers recruited and monitored by the Town's Tourism Officer, who is employed by the Faversham Town Council, working in partnership with the Faversham Society and other community groups.*
- *The site would be secured by the Town Council and up to the first two years will be used to provide evidence of the future need by:*
 - *Displaying the existing Magna Carta and Charter Exhibition*
 - *Providing other temporary exhibitions in partnership with the Faversham Society and local schools*
 - *Providing formal and informal learning opportunities*
 - *Enhancing cultural access and understanding of local heritage*
 - *Providing volunteering and work experience to members of the community*
- *An application will be developed for the Heritage Lottery Fund to provide first class international standard exhibition with security and protection for the artefacts. This will include the facility to rotate part of the exhibition area every six months with other "mini" exhibitions giving details of the other unique aspects of Faversham's Heritage. The subjects covered would include the Faversham Creek, the Cinque Ports, the Medieval Battle of Faversham, the Gun Powder Industry, the Great Explosion of 1916, the Huguenots in Faversham, Brewing in Faversham, the arrival of the railways, the Faversham Abbey etc, etc.*

The reasoning behind the proposed purchase of 12 Market Place:

- *The property would be a freehold asset for the community.*
- *Provides a permanent and secure home for the town council's offices.*
- *A well-appointed location within the town to house a museum for Town Council's Charters, artefacts and Magna Carta.*
- *The property has a distinct frontage, ideal for a town hall/museum.*
- *The Tourism Officer, and other Town Council staff, will be ideally located to oversee the day to day management of the proposed museum.*
- *The Guildhall is currently disengaged from the Town Council and, together with the proposed upgrade, will benefit from the council's offices being conveniently located opposite and will be used more for Mayoral engagements.*
- *The marriage of the two buildings is further strengthened in that the Committee Room has a superb twelve-panelled carved overmantel that once graced 12 Market Place, when it was the home of Henry Hatch, a great local benefactor, who died in 1533.*
- *Council staff will also be ideally located to oversee the letting of the Guildhall to increase its community use.*
- *Also, increasing availability of the 1603 Grade II* Guildhall as a heritage asset for tourists, working in partnership with the Faversham Society to enhance their history walks offer. The Council Chamber walls bear panels listing mayors since 1292, with small portraits (mainly photographs) of most since 1840.'*

2.05 The application, if approved, would produce a mixed use building with A1/B1/D1 mixed use.

2.06 The application is presented to the Planning Committee in view of the number of objections received and at the request of Councillor Mike Henderson, as the proposal is contrary to SBC planning policy.

4.0 PLANNING CONSTRAINTS

Potential Archaeological Importance
 Conservation Area Faversham
 Listed Buildings SBC Ref Number: 405/SW
 Description: G II 12 MARKET PLACE, FAVERSHAM

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)
 Development Plan: Saved policy B3 of the Swale Borough Local Plan 2008
 Policies DM1, DM2, DM32 and DM33 Bearing Fruits 2031
 Supplementary Planning Guidance: Conservation Areas, Listed Buildings a Guide for Owners & Occupiers

6.0 LOCAL REPRESENTATIONS

6.01 Three letters/emails of objection have been received from local residents. Their contents may be summarised as follows:

- Contrary to Policy B3 of the SBLP 2008
- Negative impact on surrounding retail outlets
- Harmful to the vitality and viability of the Core Shopping Area

- In a prime retail location
- Other applications for non-retail use have been refused or withdrawn
- The Alexander Centre already serves
- I presume that the Town Council being the applicant would not be a pertinent factor?
- Having such a large retail unit available for immediate occupation would aid regeneration
- Would set a dangerous precedent
- Premature; a feasibility study is needed

6.02 Two emails of support have also been received. Their contents may be summarised as follows:

- Will bring an empty unit back into use
- Will be a major asset to the community
- Will attract more visitors to the town
- Valuable asset to local schools, colleges and universities
- Leicester has capitalised on its links with Richard III; this will bring the opportunity for Faversham to capitalise on its links with King Stephen (*who founded and was buried at Faversham Abbey – my note*)

6.03 The Faversham Society recognises the potential significance of the use and supports the proposal, commenting that '*The provision of a display space for Magna Carta and charters was one of the principal aims of the Magna Carta exhibition in 2015, and this proposal seeks to provide an important visitor attraction to the town.*'

7.0 CONSULTATIONS

7.01 Kent Highways and Transportation raises no objection to the proposal.

7.02 The Council's Economic and Community Officer Tourism Officer supports the application.

8.0 APPRAISAL

8.01 My main considerations in the determination of this planning application are those of planning policy towards out town centres.

8.02 Saved policy B3 of the Swale Borough Local Plan 2008 states that the Core Shopping Area should be protected for A1 retail use only. I acknowledge that the proposed use would include a small element of retail use, but the predominant ground floor use would be D1 (non-residential institutions), which would normally be precluded under Policy B3 in the interests of preserving the vibrancy and vitality of the town centre. However, I am of the opinion that the proposal may still prove to be broadly acceptable. Policy B3 states that '*Within the defined core shopping areas...the Borough Council will only permit non-retail uses that enhance the primary retail function of the area by adding to the mix of uses in the town centre area as a whole and increase its overall vitality and viability*' and '*provide a service or facility for residents or visitors currently lacking or under-represented in the town centre.*'

8.03 In this case, I would firstly argue that the proposed use would enhance the primary retail function of the area by adding to the mix of uses in the town centre area as a whole and increasing its overall vitality and viability, by adding a prominent tourist destination within the centre of Faversham, encouraging new visitors, who will in turn

be likely to spend in local shops, cafes, etc. I am of the opinion that the proposed exhibition centre will attract an ever-increasing number of people who would wish to see the heritage and history on offer within the town, and these people would bring further trade to the surrounding shops, thus positively affecting the vibrancy, vitality and economy of the town.

- 8.04 Secondly, I would contend that the proposal, if approved, would provide a unique community and tourism service which at present is not available in Faversham in this form. The proximity of the Guildhall would provide a double attraction for visitors, in conjunction with the proposed exhibition centre.
- 8.05 This is, undoubtedly, a good, large retail premises within the Core Shopping Area, and in normal circumstances I would not recommend approval for a change of use from A1 Retail Use. However, the present application is for a unique, one-off proposal. The sale of the property provides a unique opportunity to provide a permanent exhibition centre for Faversham's Magna Carta and other historic medieval charters, creating greater interest and tourism within the town, and providing a suitable hub for the services provided by Faversham Town Council. I am of the opinion that any other type of proposal for non-retail use in this property would be likely to be unacceptable, but due to the singular nature of the proposal, and the accompanying benefits which the proposal, if approved, would bring to the town, I am of the opinion that, in this instance, a unique exception to policy can be made, which will not set any future precedent.
- 8.06 I acknowledge the fact that in the last two years, two applications for a coffee shop in this property have been withdrawn and one refused for same, due to the loss of retail use within the Core Shopping Area, and that was, and is, the correct course of action; Faversham already has many fine coffee shops and eating establishments, so these proposal would have only resulted in a loss of A1 retail use, the dilution of the vitality of the town centre, and another coffee shop adding to a service sector which is already well provided for within the town. However, as stated above, the present application presents a unique proposal to bring a one-off community and tourist facility to the town centre, supporting the mix of uses and increasing the vibrancy of the town centre.

9.0 CONCLUSION

- 9.01 In view of the above, I am of the opinion that the application should be supported, even though it is strictly contrary to Policy B3. I am of the opinion that the public benefit outweighs the policy issues, and I therefore recommend approval.

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.

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 ground floor of the property shall be used only by Faversham Town Council for the public display of historic artefacts and documents associated with Faversham, to include a small retail area associated with same, and ancillary activities, and no other uses, including any other uses within Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or any other order revoking or replacing that Order.

Reasons: To ensure that the ground floor is used solely for the display of historic artefacts and documents associated with Faversham, thus promoting tourism interest within the town centre.

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

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

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

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

2.2 REFERENCE NO - 15/509875/FULL			
APPLICATION PROPOSAL Erection of a three bedroom detached dwelling with associated parking and access to both the existing and proposed dwellings.			
ADDRESS 35 Orchard Way Eastchurch Kent ME12 4DS			
RECOMMENDATION: Grant subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION In light of the appeal decision for land adjacent to 11 Range Road noted below (copy attached at Appendix A) the Council's longstanding approach of resisting new residential development in the area would not be sustainable at appeal given the almost identical circumstances in this case. The site is considered to be a sustainable location for the dwelling proposed with no other material considerations indicating that permission should be refused.			
REASON FOR REFERRAL TO COMMITTEE At the request of Councillor Prescott.			
WARD Sheppey East	PARISH/TOWN Eastchurch	COUNCIL	APPLICANT Mr & Mrs Lee Marshall AGENT Kent Design Partnership
DECISION DUE DATE 02/06/16	PUBLICITY EXPIRY DATE 25/02/16	OFFICER SITE VISIT DATE 28/1/16	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
No relevant planning history for the application site.			
Relevant history at land adj 11 Range Road, Eastchurch, ME12 4DU.			
Swale Borough Council reference 14/506821/FULL. Appeal reference APP/V2255/W/15/3135783	A pair of 3 bedroom semi detached dwellings with associated garages and parking.	Refused by Swale Borough Council and allowed on appeal.	28/1/16

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The site consists of the front, side and part of the rear curtilage of 35 Orchard Way. The site gently rises to the north. The site is located at the eastern end of Orchard Way. The dwellings to the west are semi-detached and two storey with either on site parking to the front or no on site parking. Directly to the east and south is an equestrian development which is owned by the applicant, as is 35 Orchard Way. To the north is the former route of the Sheppey Light Railway. The wider area is characterised by residential development and the surrounding countryside ,which is

dominated by the Sheppey Prison Cluster to the south. The site is located within the countryside as defined by the proposals map of the Swale Borough Local Plan 2008.

2.0 PROPOSAL

- 2.01 The existing garage to the side of 35 Orchard Way would be demolished and replaced by a three bedroom detached dwelling with two car parking spaces to the front and two additional car parking spaces to the front of number 35 to serve this dwelling.
- 2.02 The dwelling would measure a maximum of 6 metres wide, 10.5 metres long and 8.4 metres to ridge height. The design includes a brick plinth, front dormer window, and a dual pitched roof with full hips to the front and rear. The external finishing materials are described as multi buff facing in natural mortar for the main facing bricks, plain red facings in natural mortar for the plinth and feature brickwork, red/brown plain concrete hip and roof tiles and tile hanging, and light oak coloured upvc windows and doors.
- 2.03 The applicant intends to build the dwelling to level 4 of the code for sustainable homes.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Parking Spaces	4	4	0
No. of Residential Units	0	1	+1

4.0 PLANNING CONSTRAINTS

The site is of potential archaeological importance and is located within the countryside.

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) regarding Achieving sustainable development; 1. Building a strong, competitive economy; 6. Delivering a wide choice of high quality homes; 7. Requiring good design; 11. Conserving and enhancing the natural environment; 12. Conserving and enhancing the historic environment.

Development Plan: Policies SP1, SP2, SP3, SP4, SP5, SP6, TG1, SH1, E1, E6, E9, E12, E16, E19, RC3, H2 and T3 of the Swale Borough Local Plan 2008.

Policies ST1, ST2, ST3, ST4, ST6, CP1, CP2, CP3, CP4, CP7, CP8, DM7, DM14, DM19, DM21, DM28 and DM34 of Bearing Fruits, the Council’s emerging local plan.

6.0 LOCAL REPRESENTATIONS

- 6.01 Eastchurch Parish Council raises no objection.
- 6.02 Councillor Prescott states “Further to my verbal request re the above I will be grateful if you will bring this app to committee should you be mindful to approve it.”
- 6.03 No other representations have been received in respect of this application.

7.0 CONSULTATIONS

- 7.01 Kent County Council Highways and Transportation makes no comment.

- 7.02 Kent County Council Archaeology Unit advise that no archaeological measures are Necessary.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The applicant has provided a design and access statement, planning statement and sustainability statement.

9.0 APPRAISAL

Principle of Development

- 9.01 Normally, I would consider development in the countryside (outside the built up area of Eastchurch,) unacceptable as a matter of principle. However – I am mindful of the appeal decision made on 28th January 2016 at 11 Range Road (attached as an appendix to this report) which granted permission for 2 dwellings approximately 100m from the site. The Inspector in that case considered that the principle of residential development in that location was acceptable and that the proposal contributed towards the social, economic and environmental strands of sustainable development. In particular, he considered the proximity of public transport and access to Eastchurch village centre appropriate. Whilst Members are not bound to follow the Inspector's reasoning, it is a material consideration of substantial weight, and Members must have regard to it. In my view, bearing the appeal decision in mind, the principle of development here is acceptable.
- 9.02 The Council cannot demonstrate a 5 year supply of housing land. Therefore, the Council's policies that seek to influence the location of such development are to be considered out of date, as set out in paragraph 49 of the NPPF. This means that primarily policies E6 (Countryside) as far as it relates to housing, H2 (Providing for New Housing) and RC3 (Helping to Meet Rural Housing Needs) of the adopted Swale Borough Local Plan 2008 (SBLP) are out of date because they seek to restrict housing development in the countryside and outside built up area boundaries as defined by the Proposals Map of the SBLP. As such these policies are afforded limited weight.
- 9.03 Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development. It dictates that where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the whole framework, or where specific policies in the framework indicate development should be restricted.
- 9.04 The framework identifies three dimensions to sustainable development; economic, social and environmental, and states that planning needs to perform roles in all three dimensions. Each is considered in turn below.
- 9.05 The site is in the countryside to the south of Eastchurch, around $\frac{3}{4}$ of a mile from the settlement boundary and 1 mile from the village centre with good and services available there. Church Road which links the area to the village centre benefits from a footway and lighting which gives pedestrians safe access to the village centre. Church Road has a bus stop approximately 250 metres from the site which is served by three bus services providing links to the village centre and larger towns further afield. Accordingly, because of the sites accessibility to goods, services and public transport links, the provision of housing in this location would support the well being of the village and help to perform the social role in sustainable development.

- 9.06 There is potential for future residents of the proposal to find work at this prison cluster and the construction phase will generate short term employment. Therefore, the proposal would contribute to the local economy and the economic role of sustainable development, albeit in a small way (I give this matter limited weight) The immediate area has a primarily residential character and therefore no harm would be caused to the character and appearance of the countryside as a result of the development.
- 9.07 Paragraph 55 of the NPPF advised that isolated homes in the countryside should be avoided. However, due to the size of the settlement within which the site is located and the links to the village centre, it is not considered isolated as defined. There would be no adverse impacts from the proposal, there would be benefits when considered against the NPPF as a whole and there are no specific policies in the NPPF which indicate that development should be restricted. The proposal constitutes sustainable development and should be approved in my opinion.

Impact on character and appearance of the area

- 9.08 Given the description of the site above, in my view the site relates more strongly to the neighbouring residential street than to the countryside to the south and east which is used for equestrian purposes. The form and scale of the proposal is in keeping with the dwellings to the west. The proposal is marginally smaller, approximately 0.5 metres, than 35 Orchard Way and whilst the design is different from its immediate neighbours it is acceptable as it is well designed in its own right and accords with the area.
- 9.09 The proposed parking arrangement would not be harmful to the character and appearance of the streetscene because a significant amount of the existing front garden is already given over to hardstanding, and the creation of two additional car parking spaces would accord with the area given that properties to the west have a mixture of frontage parking and on street parking.
- 9.10 Consequently the development would not harm the character and appearance of the area, including the countryside, and would comply with policies E1 and E19 of the SBLP.

Residential Amenity

- 9.11 The proposal has one near neighbour, 35 Orchard Way, and it would project 1.2 metres to the rear of it and be 2 metres away from it. To the front, the proposal would project 1 metre to the front of 35 Orchard Way and be 2 metres away from it. These projections comply with the guidance within the Council's adopted SPG entitled 'Designing an Extension: A Guide for Householders' and would have an acceptable impact on residential amenity in my opinion. The proposal has 4 windows to the western elevation which are in close proximity to the obscure glazed side door and windows of 35 Orchard Way therefore it is reasonable to attach the condition below requiring the side openings are similarly obscure glazed to prevent harmful overlooking of the neighbouring property. Given the lack of other nearby neighbouring dwellings and subject to the condition noted the impact on residential amenity is acceptable in my opinion.

Highways

- 9.12 The provision of two car parking spaces for the proposed dwelling and two for the existing dwelling accords with adopted KCC Highways and Transportation standards.

Their size, layout and manoeuvrability into and out of the spaces are similarly acceptable. The impact on highway safety and convenience is acceptable in my opinion.

Other Matters

9.13 There is no requirement for archaeological measures in light of the comments of Kent County Council Archaeology.

9.14 I note that the intention here is to build the dwelling to level 4 of the Code for Sustainable Homes. The code has though been abolished. I recommend imposing condition (3) below, which requires details of sustainable construction techniques to be used.

9.15 I have carried out a Habitats Regulations Assessment below, which concludes that a contribution to off site mitigation is not required.

10.0 CONCLUSION

10.01 The proposal constitutes sustainable development as defined by the NPPF because it secures social, environmental and economic gains, with no harm arising and as a result I recommend that permission is granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions;

CONDITIONS to include

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

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

(2) 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.

(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) 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.

- (5) 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 and encouraging wildlife and biodiversity.

- (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 and encouraging wildlife and biodiversity.

- (7) The vehicle parking spaces numbered 1 and 2 shall be used solely by occupiers of and visitors to the dwelling hereby permitted, and the vehicle parking spaces numbered 35 and 35 shall be used solely by the occupiers of and visitors to 35 Orchard Way, as shown on submitted drawing number SK01 Rev A. These vehicle parking spaces 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 (as amended) (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 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.

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

Reason: In the interests of residential amenity.

- (9) No development shall take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period unless any variation has been approved by the local planning authority.

Reason: To protect the amenities of neighbouring residents.

- (10) The openings to the west facing elevation of the dwelling hereby permitted shall be obscure glazed prior to the occupation of the dwelling and shall remain so in perpetuity.

Reason: To prevent harmful overlooking of a neighbouring property.

- (11) The development shall proceed in accordance with the following approved plan numbers: SK01 Rev A, SK02, SK03, SK04 and SK05.

Reason: For the sake of clarity.

INFORMATIVES

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

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

Habitat Regulations Assessment screening

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

The application site is located approximately 1.8 miles north of the Swale Special Protection Area (SPA) 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 and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It 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 of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, 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 single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward.

Swale Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

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

APPENDIX A



Appeal Decision

Site visit made on 5 January 2016

by **Andrew Owen MA MRTPI**

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

Decision date: 28 January 2016

Appeal Ref: APP/V2255/W/15/3135783

Land adjacent to 11 Range Road, Eastchurch, Sheerness, Kent ME12 4DU

- 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 Marshall against the decision of Swale Borough Council.
 - The application Ref 14/506821/FULL, dated 22 December 2014, was refused by notice dated 12 August 2015.
 - The development proposed is a pair of 3 bedroom semi detached dwellings with associated garages and parking.
-

Decision

1. The appeal is allowed and planning permission is granted for a pair of 3 bedroom semi detached dwellings with associated garages and parking at land adjacent to 11 Range Road, Eastchurch, Sheerness, Kent ME12 4DU in accordance with the terms of the application, Ref 14/506821/FULL, dated 22 December 2014, subject to the conditions listed in the attached Schedule.

Main Issues

2. The main issues in this appeal are the effect of the proposal on the character and appearance of the area and whether the development would constitute sustainable development.

Reasons

Character and Appearance

3. The site is within a small settlement dominated by three prisons forming the Sheppy prison cluster and also including a fire station and around 70 dwellings. It effectively comprises an undeveloped corner plot as it faces Range Road to its south and east. The adjacent development to the north is a row of two-storey, semi-detached properties and the dwellings to the west are of a similar form, design and appearance. There is a playing field to the rear of the site, Swaleside prison car park to the south and a paddock opposite. The paddock and the car park are visually separated from the site by bushes and hedgerows of around five metres in height and hence contribute little to the visual context of the site. As a result the site relates more strongly to the neighbouring residential development than to the rural land opposite. Consequently the development would have little impact on the character or appearance of the countryside.
-

Appeal Decision APP/V2255/W/15/3135783

4. The dwellings on Range Road are of a regular form, scale and appearance being exclusively semi-detached, two-storey properties constructed of red or yellow brick and accompanied in parts by hanging tiles or weatherboarding. The development would reflect this form and scale and would incorporate weatherboarding at first floor level. The building would differ from the adjacent units by being marginally higher, incorporating dormers and having half hipped roofs. However these differences would not result in the development appearing incongruous in its setting.
5. The garage to the rear of plot 1 would be detached from the main house and would front the part of Range Road that runs parallel to the south boundary of the site. The garage would be largely screened from views from the west by the boundary fence and by a large tree that is positioned just beyond the south west corner of the site. The driveway in front of this garage would project forward of the rest of the development and would be visible in the street scene. However even when a car is parked on here, the driveway would not appear unduly prominent in the street scene. Indeed many of the other properties along Range Road have driveways forward of the dwelling. As such, in this respect the development would also not appear incongruous in its setting.
6. Consequently the development would not harm the character and appearance of the area, including the countryside, and would comply with Policy E1 of the Swale Borough Local Plan (SBLP) which seeks to ensure development is appropriate to its location, and Policy E19 of the SBLP which requires development to be of a high quality design.

Sustainable Development

7. It is not disputed that the Council cannot demonstrate a five year supply of housing land. In such circumstances, paragraph 49 of the National Planning Policy Framework advises that relevant policies for the supply of housing should not be considered up to date. Policies H2 and RC3 of the SBLP relate to the provision of housing and so should not be considered up to date. Policy E6 of the SBLP relates to development generally in the countryside and should also be considered out of date in so far as it relates to housing supply. As such, I can give these policies only limited weight.
8. The presumption in favour of sustainable development is set out in Paragraph 14 of the Framework. It adds that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole, or where specific policies in the Framework indicate development should be restricted.
9. The Framework identifies three dimensions to sustainable development: economic, social and environmental, and states that planning needs to perform roles in all three dimensions. It is necessary to consider the proposal in terms of all three roles to establish whether it constitutes sustainable development.
10. The site is located outside the defined settlement of Eastchurch, being approximately $\frac{3}{4}$ mile from the settlement boundary and around 1 mile from the village centre and the goods and services available there. Church Road, which links the Sheppy prison cluster to the village centre, does have a footway along its length and some lighting and so provides a safe pedestrian access to the village centre. Furthermore, on Church Street there is a bus stop around

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300 metres from the site which is served by three bus services providing links to the village centre and larger towns further afield. Accordingly because of the site's accessibility to goods, services and public transport links, the provision of housing in this location would support the well-being of the village and help to perform the social role in sustainable development.

11. The prison cluster dominates the context of the site, and the appellant has commented that the neighbouring houses were originally built to house prison staff and their families. It is not unreasonable to consider that the prisons could provide employment opportunities for future residents of the dwellings which would be accessible by walking or cycling. Furthermore there may also be a short term gain for the local economy during the construction period. Consequently, the development would contribute to the local economy and fulfil the economic role.
12. As set out above, the immediate area has a primarily domestic character and therefore no harm would be caused to the character or appearance of the countryside as a result of the development. As such the development would protect the countryside and the environmental role would be met.
13. In terms of complying with specific policies in the Framework, Paragraph 55 advises that isolated homes in the countryside should be avoided. However due to the size of the settlement within which the site is located and the links to the village centre, I do not consider that the development would be isolated.
14. In summary, there would be no adverse impacts arising from the proposed dwelling, there would be benefits when considered against the Framework as a whole and there are no specific policies in the Framework which indicate that development should be restricted. For all the above reasons, I find that the proposed dwelling would constitute sustainable development as defined in the Framework. The development would also accord with Policy H2 of the SBLP which supports sustainable forms of development, and Policy E6 of the SBLP which requires development to protect the character of the countryside.

Conditions

15. I have considered the conditions put forward by the Council against the requirements of the national Planning Practise Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect this guidance.
16. In addition to the standard timescale condition, I have attached conditions for the avoidance of doubt, to protect the character and appearance of the area, in the interests of sustainable development, in the interests of highway safety and in the interests of the residential amenity of neighbouring residents. Some conditions require compliance prior to the commencement of development so that the effects of the development are properly mitigated for.

Conclusions

17. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed and planning permission granted subject to the conditions in the attached Schedule.

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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: 14.48.01B, 14.48.02B and 14.48.03A.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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.
- 4) No development shall take place until details have been submitted to and approved in writing by the local planning authority which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling and energy efficiency. Such measures shall be carried out as approved.
- 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 and these works shall be carried out as approved before the occupation of the development. These details shall include existing trees, shrubs and other landscape features; schedules of plants noting species (which shall be native species), plant sizes and proposed numbers/densities where appropriate, means of enclosure, hard surfacing materials and an implementation programme.
- 6) If within a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written approval to any variation.
- 7) No dwelling shall be occupied until the garages and vehicle parking and manoeuvring areas have been provided within the site in accordance with drawing No 14.48.01B.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the garages, vehicle parking and manoeuvring areas shall be kept available for vehicle parking and manoeuvring at all times.
- 9) Construction works shall not take place outside 0730 hours to 1900 hours Mondays to Fridays and 0730 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays, unless with the prior written approval of the Local Planning Authority.
- 10) No development shall take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period unless any variation has been approved by the local planning authority.

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2.3 REFERENCE NO - 16/501136/FULL			
APPLICATION PROPOSAL Erection of new grain store As amended by drawings and information received on 6 TH 19 TH and 21 ST April 2016			
ADDRESS Parsonage Farm Parsonage Lane Bredgar Kent ME9 8HA			
RECOMMENDATION: APPROVE SUBJECT TO RECEIPT OF SATISFACTORY DETAILS TO ADDRESS HIGHWAY ISSUES AND COMMENTS FROM KENT HIGHWAY SERVICES.			
SUMMARY OF REASONS FOR RECOMMENDATION Amendments and additional information have overcome initial concerns			
REASON FOR REFERRAL TO COMMITTEE Parish Council Objection			
WARD West Downs	PARISH/TOWN Bredgar	COUNCIL	APPLICANT S W Attwood And Partners AGENT
DECISION DUE DATE 2/06/16	PUBLICITY EXPIRY DATE 12/05/16	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/13/0945	Retro demolition of granary building	GRANT	
SW/12/0567 & SW/12/0734	Extend permissions SW/09/0323 & SW/09/0344	GRANT	
SW/09/0344 & SW/09/0323	Works to farmhouse	GRANT	
SW/08/1208	Demolition of barn and construction of replacement	GRANT	

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 Parsonage Farm lies to the South of the village of Bredgar with the land rising gently to the south from the farmstead and is surrounded to the north, south and east by arable land.

1.02 The whole site lies within the Kent Downs Area of Outstanding Natural Beauty and whilst the farmstead is within the Bredgar Conservation area the land for the siting of the barn lies outside it and is also outside the curtilage of the Listed Buildings These are the farmhouse which is Listed Grade II, and a Grade II listed Cart shed is adjacent, together with range of traditional buildings and more modern farm buildings which date from around the 1970s. These consist of:

1. A steel portal framed building used as a temporary grain store
2. A grain silo

3. Concrete portal framed building with lean to workshop
4. Modern traditional style Kent Barn
5. Steel portal framed stable building
6. Steel portal framed stable building

- 1.03 The total existing floor-space is, according to the Design and Access Statement, 1514 square metres.
- 1.04 The farmstead is enclosed to the west and south by paddocks used by the established existing livery enterprise and is screened from the east and west by existing trees and to the north is a hedge with scattered trees.
- 1.05 The Design and Access Statement explains that the applicants farm 390 acres (or 158 hectares) of land at Parsonage Farm, and that their total land holding in Swale Borough is 3500 acres (or 1416 hectares).

2.0 PROPOSAL

- 2.01 This application involves the construction of a new grain store at Parsonage Farm, Bredgar
- 2.02 The proposed building would measure 40.5m in width by 36.6m in length; the eaves heights would range from 5.8m (on the eastern elevation) to eight metres; and the ridge height would be 11.5m.
- 2.03 The gross floor-space to be provided would be 1482 square metres.
- 2.04 The site would be excavated such that the finished ground floor level would be 95.9 metres AOD (above Ordnance datum), while land in the immediate vicinity sits at approximate 96 to 99 metres AOD.
- 2.05 A bund – to a height of approximately 2.5 metres - is proposed to the east, south and west of the building.
- 2.06 The roof will be covered with a Juniper Green (a dark green) fibre cement cladding and the walls with a Merlin Grey plastisol cladding above the concrete panels on the elevations.

3.0 PLANNING CONSTRAINTS

- 3.1 Area of Outstanding Natural Beauty KENT DOWNS
- 3.2 Conservation Area Bredgar

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.1 The National Planning Policy Framework (NPPF): including Paragraphs 28 and 116, which I refer to below.
- 4.2 National Planning Practice Guidance (NPPG)
- 4.3 Development Plan: E1, E6, E9 and E19 of the adopted Swale Borough Local Plan.

- 4.4 Supplementary Planning Documents: Swale Landscape Character and Biodiversity Appraisal (2011). The site is located within the Tunstall Farmlands character area, which are considered to be in moderate condition and with a high sensitivity.

5.0 CONSULTATIONS

- 5.01 **Bredgar Parish Council** object to the proposal for the following reasons:

1. The presence of the proposed very large store, with a height of over 12 metres and a footprint of more than 1,000 square metres, of modern construction is out of place in the AONB and close to the centre of a small historic village.
2. The proposed structure is of disproportionate size, as compared with the surrounding listed buildings and buildings in the neighbouring Conservation Area, and will impact negatively on the intrinsic character of the village.
3. In relation to section 8 of the Heritage Statement, it is disputed that the construction will have no impact on the rural nature of the AONB. The design is industrial in nature, as compared, for example, with the black barn shown in figure 2 of the Design and Access Statement.
4. The applicants suggest that, because production will not be increased, the impact on traffic will be neutral. If this were not to be the case in the future, for example, if the facility were to be used for storage of grain not produced on the farm, or if the farm were to expand, the resultant increase in heavy goods traffic in the surrounding rural lanes would be a serious concern.
5. The applicants make reference to new EU rules, and if these are a key driver for the project, perhaps the application should be held, pending the referendum on EU membership.
6. In relation to the current draft Local Plan, regard should be had to policy DM23.

In the event that permission for the application is granted it will be essential that the proposed screening be carried out at the earliest opportunity, using species sympathetic to the surrounding environment, and that the embankment work effectively reduces the height impact.

- 5.02 **Environment Agency:** raise no objection but provide advice regarding pollution prevention measures, and the soakaways.

- 5.03 **The Council's Agricultural Consultant:** commented that, the main section of the proposed building would have a nominal capacity for holding some 3200 tonnes of corn, although in practice, due to the separation of different crops, and access arrangements, the actual capacity is likely to be rather less. The main section would become the principal grain storage facility for an established farm business including some 690 acres (279 ha) of arable cropping in the local area, whilst the lean-to would be mainly utilised for secure storage of fertiliser and machinery.

The farm has limited grain storage at present, amounting to about 1050 tonnes, but the main store (800 tonnes) is an old in-bin facility now effectively at the end of its useful life, in terms of modern arable production, due to its condition and the slow speed of handling grain. The other store is a converted potato store and too low for tipping grain trailers.

Excess grain that cannot be stored on the farm currently has to be sold at harvest or placed elsewhere in rented stores.

Having regard to the above, and to applicant's submissions as to the needs of the farm, I consider the proposed building to be of an appropriate size and design for efficiently meeting the storage requirements of this relatively large and established arable farm.

- 5.04 **Southern Water:** offered no comment except in regard to the potential ownership of any sewers found on the site.
- 5.05 **Environmental Protection Team Leader:** recommends condition that construction/demolition activities takes place at restricted times.
- 5.06 **KCC Highways and Transportation:** comment that a condition restricting the origin of the grain to be stored on the site would be necessary and that they require further details on traffic and lorry movements at the current time and going forward need details of what is the anticipated movements to and from the new grain store. It is accepted that on the highway network as a whole the traffic impact could be neutral but locally it needs to be fully assessed.

6.0 BACKGROUND PAPERS AND PLANS

- 6.01 Application papers and correspondence relating to planning reference 16/501136

7.0 APPRAISAL

The application needs to be assessed to balance the needs and requirements of a farmer to develop his agricultural business against the sensitive location of that farming business adjacent to a Conservation Area and within the AONB.

Principle of Development

- 7.01 The applicant has explained in detail about the requirements on this farm for a new grain store given the requirements of his agricultural business. I therefore accept with the advice from our independent Agricultural Consultant that there is an agricultural need and the business case for the additional grain store.
- 7.02 Para 28 of the NPPF requires planning policies to promote and support the development of agricultural businesses but also gives great weight to conserving the landscape and scenic beauty of the AONB. Para 116 advises that applications such as this should be considered in light of the need for the development, the scope for developing elsewhere and that any detrimental effects on the landscape be moderated.
- 7.03 Policy E9 of the Swale Borough Local Plan priorities the long-term conservation and enhancement of the natural beauty (including landscape, wildlife, and geological features) of the AONB as a national asset over other planning considerations and states that major developments will not be permitted unless there is a proven national interest and no suitable alternative sites.

Visual Impact

- 7.04 The grain store is sited to the south of the farm and its historic buildings and general activity. It is to be a large building at 40m in width and 36.5m in length, it will be 5.8m

to the eaves and 11.5m to the roof ridge and therefore will be visible from the nearby roads and public footpaths, to varying degrees.

- 7.05 However the store would be located at a reduced ground level, 2m lower than the existing ground level. Furthermore a 2.5m high bund is to be created around the store on top of the existing ground level and landscaped. These two factors would reduce the impact of the barn on the landscape by markedly reducing its visible height. In addition the existing established field boundary would be supplemented with indigenous planting to intensify the screening.
- 7.06 The materials to be used on the roof of the building will be Juniper Green (a dark green) fibre cement cladding and a Merlin Grey plastisol cladding above the concrete panels on the elevations (these would be largely hidden from view due to the above measures).
- 7.07 The location of the store would also ensure that the existing hardstanding at the farm can be utilised for the grain store rather than the need to provide any additional hardstanding areas. I further note the existing buildings on site are more modern and of varying design and quality and the grain store being close to these buildings is the best location for the store.
- 7.08 I consider that the combination of these measures and the chosen location will sufficiently moderate the impact the grain store would have on the AONB.

Residential Amenity

- 7.09 The site is to the south of the village of Bredgar and as such the positioning of the barn to the south of the farm yard and buildings ensures it is quite some considerable distance from any residential properties as arable fields intervene and surround the farm. I further consider that the measures outlined above will serve to mitigate and screen the store to an acceptable degree to not cause harm to the residential amenities of any nearby properties. Members will also have noted that Environmental Protection Team Leader raises no objection to the application.

Highways

- 7.10 The submission states that there will be no impact on the local highway network as more grain would be able to be stored on site it will reduce the number of trips from the site, particularly during harvest season. As stated above at paragraph 5.06 the Highway Authority require further details from the applicant of traffic and lorry movements to and from the site before and after the proposed grain store and their subsequent views are then awaited on such details. I will update members further at the meeting on these issues.

Landscaping

- 7.11 The site currently has an established vegetation screening along the boundary to the south west and east. Additional information from the applicant confirms that the existing field boundary would be reinforced with native planting and also that a swathe of native whips to be planted from the south west corner of the field to the rear of the bund on the south east corner. I have included a condition to ensure the correct number and mix of planting is achieved.
- 7.12 Furthermore, the 2.5m bund will be landscaped with grass to ensure it blends in with the appearance of the existing field.

Other Matters

- 7.13 There is a Grade II listed farmhouse and a Grade II listed cart lodge at the farm and as such the impact of the proposed grainstore on these buildings needs to be assessed. The store is to be located to the south of the historic listed farm house and the existing buildings and a tree line to the south of the farmhouse will screen it from the historically sensitive area of the farm. It will however be visible once you leave this “historic domestic area” and move into the farmyard.
- 7.14 The design of the grain store as submitted is as one building however it was suggested to the applicant that two buildings rather than one large building would be more appropriate. In response due to the size of the machinery used on the farm and the capacity and efficiency issues this was not considered a viable option by the applicant. As such the building was mitigated to some degree by its reduction to 11.5m in height, the minimum given the machinery that is needed to operate within it. Also the 1m overhang serves as a better design detail.
- 7.15 I note the comments by the Parish Council, which were submitted prior to the amendments being made and I consider I have addressed them in this report ,additionally I have attached conditions to address their concerns. Although I do not consider delaying a decision until after the EU referendum to be appropriate or reasonable.

8.0 CONCLUSION

- 8.01 There is a balance to be made between supporting agricultural businesses and the protection of sensitive landscapes, particularly given that the two are usually so interwoven. In this case a strong business case has been presented by Parsonage Farm for the need to modernise and be more efficient in their storage of grain they produce at the farm. New machinery and the capacity of storage the farm requires has dictated the size of the grain store however extensive modifications and mitigation measures are being employed to ensure the impact of the barn is minimised. The building is located to the south of the main farmstead and as such there will be no impact on the historic listed buildings at the farm and is furthest away from the village and any residential properties. It is to be set at a lower ground level, and a landscaped bund will screen it by a further 2.5m. The colouring of the materials on the building are to be dark, the long range views across the AONB will be mitigated by this and by supplementing the existing screening around the field.
- 8.02 On balance I consider that the measures proposed with the attached conditions, would sufficiently screen the grain store so it would not cause harm to the AONB and thus is acceptable and I recommend planning approval be granted.

- 9.0 RECOMMENDATION – GRANT** Subject to receipt of satisfactory details to address highway issues and comments from Kent Highway Services and the following conditions

CONDITIONS to include

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

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

- (2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans and specifications.

Reason: In the interests of residential amenity

- (3) No development hereby permitted shall take place until a schedule of tree and shrub planting (comprising indigenous species which will improve biodiversity), with a plan giving species and planting densities, has been submitted to and approved by the Local Planning Authority. The schedule shall include the timescale for implementation, and planting shall be carried out in accordance with the approved timescale. Any trees or shrubs removed or dying within 5 years of planting shall be replaced with trees or shrubs of such size or species as may be agreed in writing by the Local Planning Authority.

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

- (4) The approved scheme of tree planting and landscaping - shown on the submitted plans - shall be carried out within 6 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

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

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

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

Reason: In the interests of residential amenity.

- (6) The development hereby permitted shall not be carried out in accordance with the following approved plans: WM/476/500, WM///476/01, WM/476/02, 1610-04, and drawing 1610-2.

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

- (7) Only grain grown on farms within the County of Kent shall be stored in the hereby approved building.

Reason: In the interest of amenity.

INFORMATIVES

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

The applicant/agent was provided formal pre-application advice.

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

Case Officer: Heather Murton

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

2.4 REFERENCE NO - 15/510422/FULL			
APPLICATION PROPOSAL Use of land for siting 12 static caravans and 17 touring pitches in place of pitches lost due to cliff erosion.			
ADDRESS Warden Springs Holiday Park Thorn Hill Road Private Street Warden ME12 4HF			
RECOMMENDATION Approve, subject to conditions as set out below, amended plans further to paragraphs 9.12 and 9.13 below, and receipt of comments from the Council's Open Spaces Manager.			
SUMMARY OF REASONS FOR RECOMMENDATION Development would compensate for pitches lost to cliff erosion, would be in accordance with local and national policy, and would not give rise to any significant amenity concerns sufficient to justify a refusal of planning permission.			
REASON FOR REFERRAL TO COMMITTEE Parish Council and local objections.			
WARD Sheppey East	PARISH/TOWN Warden	COUNCIL	APPLICANT Park Resorts Ltd. AGENT Bilfinger GVA
DECISION DUE DATE 12/04/16	PUBLICITY EXPIRY DATE 23/02/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/82/0838	Re-positioning of 25 caravans.	Approved	15.12.82
Application granted permission for 25 caravans to be moved away from the cliff edge and relocated to the northern part of the site (immediately south of the current application area). The layout drawings for that application also demonstrate that 21 pitches have been lost entirely to erosion since the early '80s.			
SW/11/1043	Variation of condition to extend occupancy from 8 to 10 months.	Approved	10.11.2011
Permission granted in light of the (then) recent corporate policy change to extend occupancy periods at holiday parks. Similar approvals have since been approved at the majority of holiday parks across the Island.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site comprises an L-shaped area of open grass to the northwest of Warden Springs Holiday Park, immediately adjacent to the kink in the northern end of Thornhill Road, and to the rear of the residential properties known as 'Heritage' and 'The Beacon.' It is currently unused other than for informal recreation purposes.
- 1.02 The wider holiday park extends to approximately 15ha (including part of the coastal cliffs and beach), with the application site comprising roughly 0.8ha.
- 1.03 The eastern side of the holiday park faces the cliffs, and is subject to coastal erosion.

- 1.04 A public Right of Way extends southwards along Thornhill Road, which is impassable to vehicles beyond the site entrance.
- 1.05 The site lies entirely within Warden Parish, with Thornhill Road marking the divide between Warden and Eastchurch.
- 1.06 There are a number of mature trees on the site, some of which are protected by a TPO. Nine trees are to be removed to facilitate the development, none of which appear to fall within the TPO designations (the Council's tree consultant's comments are set out below), and root protection areas are shown on the submitted drawings.

2.0 PROPOSAL

- 2.01 This application seeks to reposition 12 existing static caravans and provide space for 17 touring caravan pitches in direct replacement for land lost to or threatened by coastal erosion since the early 1980's. There would not be any increase in pitches or number of caravans (static or touring) above previously-permitted levels as a result of this proposal.

- 2.02 The submitted Planning Statement explains further:

“3.1 When our clients purchased the park ten years ago in 2005 there were some 48 touring pitches at the front of the site (see figure 2 above). This number had been whittled away by erosion leaving just 13 touring pitches at the front of the site as illustrated upon Drawing number: 3802-130 Rev A. However, as of 22 September this year, our clients were asked to cease using these remaining touring pitches during a visit by Council Officers.

3.2 In addition to the loss of these touring pitches, when our clients purchased the park there were 254 static pitches, meaning that 15 static pitches have been lost in the last ten years. It can also be seen that plans submitted with a planning application (reference SW/82/838) in 1982 for the repositioning of 25 caravans showed about 60 static caravans that have since had to be removed due to cliff erosion. Indeed, this plan also showed a further 21 pitches that had been already lost at that time.

3.3 This planning application is therefore submitted to recover just a small number of the pitches that have been lost to cliff erosion. It is proposed to add these replacement pitches to the flat area outlined red in the aerial photo above in Figure 2 at the top, northern, area of the designated holiday park. This will create space for 17 touring and 12 static caravan pitches.

- 2.03 In respect of the proposed caravans, the Planning Statement comments:

“3.6 The static caravans will conform to the definition of a caravan as laid down by Section 29 (1) of the Caravan Sites Act 1968 as subsequently modified by S12006/2374. Therefore, the correct approach would be to apply for full planning permission for a change of use of the land to site caravans with the number and spacing controlled by the site licence.

3.7 Each static caravan would be located on a concrete base with a car parking space adjacent. The parking space will be laid with a permeable material to ensure that rainwater can still infiltrate into the ground. We propose low level

downward facing bollard lighting on the application site to minimise light pollution.”

3.0 SUMMARY INFORMATION

	Existing total	Proposed increase
Site area	1.47ha (wider park extends to approx. 17ha)	
No. of static pitches	260	12
No. of touring pitches	13	17

4.0 PLANNING CONSTRAINTS

- 4.01 Environment Agency Flood Zone 3.
- 4.02 Site of Special Scientific Interest Sheppey Cliffs & Foreshore.
- 4.03 Potential Archaeological Importance.
- 4.04 There are also a number of Tree Preservation Orders within the area, and adjoining the site.

5.0 POLICY AND OTHER CONSIDERATIONS

Adopted Swale Borough Local Plan 2008

- 5.01 Policy SP3 seeks to support economic development within the Borough, with point 5 in particular commenting that the Council will support tourism proposals, *“particularly those that increase the quality and supply of accommodation for visitors.”*
- 5.02 Further to this policy B6 supports the upgrading and improvement of existing holiday parks, within their existing site boundaries, and particularly where land has been lost to coastal erosion, subject to such developments not being detrimental to the character and appearance of the area.
- 5.03 Policy RC1 aims to diversify and support the rural economy by approving proposals provided that they do not harm the rural character of the area; cause any significant harm to landscape character and biodiversity;; or significantly increase traffic movements.
- 5.04 More generally, policies E1, E6, E10, E19 and T3 aim to ensure that all developments are appropriate in terms of scale and design; do not cause significant harm to the character of the countryside; do not harm TPO trees; and have suitable levels of vehicle parking and access.

Emerging Swale Borough Local Plan ‘Bearing Fruits 2031’

- 5.05 Policy DM4 of the emerging plan states:

“In circumstances where land is lost to coastal erosion, minor extensions to existing static holiday caravan sites will be permitted where:

- a. *in accordance with Policies DM22 and DM23 relating to the coast and the coastal change management area;*
- b. *it is demonstrated that on-site upgrading and improvement is not practicable or viable;*
- c. *there is no overall increase in the existing number of accommodation units;*
- d. *it is part of a scheme to upgrade and improve the quality of tourist accommodation and other amenities on the site;*
- e. *it results in a significant and comprehensive improvement to the layout, design and appearance of the site, together with an integrated landscape strategy that creates a landscape framework for both the existing and proposed sites that will reduce their overall impact within the landscape in accordance with Policy DM24;*
- f. *in accordance with Policy DM5; and*
- g. *there is no unacceptable impact on the local environment.”*

5.06 Policies DM22 and DM23 aim to protect coastal areas within the Borough from development that would seriously affect their ecological and landscape value.

National Planning Policy Framework (NPPF)

5.07 Similar to Policy RC1 above, para. 28 of the NPPF seeks to support economic growth in rural areas, including *“sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations...”*

5.08 The NPPF, in general, encourages such developments subject to matters of scale, design, and impact on visual and local amenity.

6.0 LOCAL REPRESENTATIONS

6.01 Four letters of objection have been received, raising the following summarised points:

- Application is unclear;
- Use of new area closer to dwellings will cause noise and disturbance;
- No evidence that existing pitches have been lost;
- Potential for trespass of neighbouring properties;
- Potential for increased litter and anti-social behaviour;
- Loss of privacy;
- Overcrowded site with only small area of recreation space;
- Increased traffic;
- Highway safety and amenity concerns;
- Lack of mains drainage in the area;
- Island not given proper consideration, behind other areas “nearer Maidstone;” and
- The PRoW should not be interfered with.

7.0 CONSULTATIONS

7.01 Eastchurch Parish Council – the adjacent parish – objects to the application, commenting:

“The recreation space would be so diminished as to be inadequate for the site.

The application would mean a loss of amenity to residents, compounded by the extra noise pollution due to proximity of the tourers to the residential properties.

The loss of land on a coastal site, whilst a sad occurrence, has been taking place for decades – planning decisions cannot be held to ransom for its loss as it was taking place when the current owners bought the site.”

- 7.02 I have not received any comments from Warden Parish Council.
- 7.03 Natural England has no objection.
- 7.04 KCC Highways & Transportation has no objection subject to the conditions below.
- 7.05 The County Flood Risk Officer has no objection subject to drainage conditions noted below.
- 7.06 The Lower Medway Drainage Board note that the site lies on clay soil, which makes soakaway drainage unfeasible. They have no objection, however, subject to conditions as suggested by the KCC Flood Risk Officer as above.
- 7.07 The KCC Public Rights of Way officer has no objections.
- 7.08 The Council’s Tree Consultant has no objection subject to conditions as noted below. The trees to be removed form part of wider clusters of trees and their removal, in isolation and in combination with the submitted landscaping scheme, would not seriously affect the character or appearance of the area, or the amenity value of the TPO groups as a whole.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The application is accompanied by a full suite of drawings, a planning statement, and a tree survey.

9.0 APPRAISAL

Principle of Development

- 9.01 The application seeks to provide replacement pitches within the confines of an existing, established holiday park. In this regard I consider the proposals to be acceptable in principle, in accordance with the above policies.

Visual Impact

- 9.02 The application site is currently an area of open grass and low vegetation, with established trees sitting along the roadside perimeter and to the rear of the adjacent residential properties. This is viewed, however, with the existing caravan park in the background, and siting further caravans here would not be totally alien to the street scene, in my opinion.
- 9.03 The submitted layout plan also shows an enhanced planting scheme along the site boundary that, once established (which would be secured through the standard landscaping conditions below), would help to screen views of the site and soften the impact of the development, and would contribute to the generally green character of this top part of Thornhill Road.

- 9.04 The caravans themselves would be of a standard appearance, and I have no serious concerns in this regard.

Residential Amenity

- 9.05 The application site sits to the rear of a number of residential dwellings on Warden Road, and I note that I have received several objection letters in regards to the potential for noise, disturbance, and loss of privacy at these properties.
- 9.06 There would, however, be a minimum of 45m between the rear of the existing houses and the proposed touring pitches, and a minimum of 90m to the static caravan pitches. The Council's normal rear-to-rear separation distance when considering residential development is 21m – this is greatly in excess of that and in this regard I do not consider that there would be any potential for serious loss of amenity for existing residents. I am further comforted by the existing mature planting to the rear of the houses, and the proposed landscaping scheme which will run along the rear boundary and enforce the existing planting.
- 9.07 In terms of noise and disturbance I do not consider that the proposal would cause such levels as to refuse planning permission in this instance, particularly with regard to the intervening distance, as above. Furthermore any noise complaints would be addressed by the Council's environmental response team under separate legislation, and I would also imagine it is in the park operator's interest to keep noise and disturbance to a minimum in the interests of other guests.

Highways

- 9.08 The development would not give rise to any substantial or significant increase in vehicle movements and I therefore have no serious concerns. I note that the County highways officer does not object, subject to conditions. However I do not consider that they are all appropriate or that the Council would be able to demonstrate justification for imposing them. I have, however, recommended that details of operative's / contractor parking, loading and unloading be provided prior to the development to ensure that Thornhill Road is not obstructed.

Landscaping and loss of trees

- 9.09 As noted above, the submitted drawings indicate substantial landscaping surrounding the new pitches and I am confident that this will serve to soften the visual impact of the development, and contribute positively to the wider character, appearance, and ecological value of the site. I have recommended the standard landscaping conditions below, which will ensure that planting is native and encourages wildlife (as far as practicable).
- 9.10 The trees to be removed do not, as far as I can tell, form part of the groups of trees that are covered by the TPOs at the site. They do, however, form part of wider clusters of trees and their removal, in isolation and in combination with the submitted landscaping scheme, would not seriously affect the character or appearance of the area, or the amenity value of the TPO groups as a whole.

Other Matters

- 9.11 I have discussed the case with the Council's environmental health officer, who has noted that additional space is required between pitches to ensure amenity space is

still available if a vehicle is parked adjacent to the units. I have requested an amended drawing to show this.

9.12 He also noted that at least 10% of the wider site should be retained for recreation space (part of the recreation land being lost to this development). Whilst more than 10% of the site is unused, much of it is currently overgrown, woodland, or adjacent to the cliff edge and therefore not available for recreation use. In this regard I have requested that the amended drawings also show either:

- a) a fence adjacent to the cliff edge to enable children to play safely;
- b) the formation of informal footpaths through the wooded areas to allow access;
- or
- c) clearance of overgrown areas to provide additional recreation space.

9.13 Subject to receipt of drawings reflecting this I have no serious concerns, and consider that there would be sufficient recreation space to cater for the wider park.

9.14 Planning permission was granted in 2011 for 10 month occupancy of the site. In order to tie in with that permission I have recommended conditions accordingly, including the Council's standard schedule of requirements associated with the extended occupancy conditions.

10.0 CONCLUSION

10.01 The application seeks to provide replacement static and touring caravan pitches to account for those lost since the 1980s at an existing, established holiday park on the Island. Whilst I note letters of objection, such a development is in accordance with adopted and emerging local and national policy and would not give rise to any serious amenity concerns such that a refusal of planning permission would be justified.

10.02 Taking the above into account I recommend that planning permission should be granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions, receipt of amended plans further to paragraphs 9.12 and 9.13 above, and receipt of comments from the Council's Open Spaces Manager:

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. (i) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been 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).

(ii) No pitches hereby permitted shall be occupied until 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:

- i) a timetable for its implementation, and

- ii) 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.

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

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

Reason: To ensure provision of adequate off-street parking for vehicles, and in the interest of highway safety and local residential amenity.

- 4. No infiltration of surface water drainage into the ground 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 or increased likelihood of erosion. The development shall be carried out in accordance with the approval details.

Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework.

- 5. In this condition "retained tree" means an existing tree, which is to be retained in accordance with the approved plans and particulars. Paragraphs i) and ii) below shall have effect until the expiration of 5 years from the date of completion of the development for its permitted use.

- i) No retained tree shall be damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the Arboricultural Report by BJ Unwin Forestry Consultancy dated Nov/Dec 2015, without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations or any revisions thereof.
- ii) If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.
- iii) The installation of tree protection barriers, the methods of working shall be undertaken in accordance with the Arboricultural Report and tree protection plan by BJ Unwin Forestry Consultancy dated Nov/Dec 2015

Reason: Pursuant to section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality,

- 6. No development shall take place until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall detail measures for protection of species to be retained, provide details of onsite replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and

a five year management programme. The landscape scheme shall specifically address the need to replace the line of poplar trees shown for removal along the site's internal western and north-western road boundaries.

Reason: As no such details have been submitted, and in the interest of the character and appearance of the area.

7. No caravans shall be occupied except between 1st March and 3rd January in the calendar year, and no caravan shall be occupied unless there is a signed agreement between the owners or operators of the Park and all caravan owners within the application site, stating that:
- (a) The caravans are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence; and
 - (b) No caravan shall be used as a postal address; and
 - (c) No caravan shall be used as an address for registering, claiming or receipt of any state benefit; and
 - (d) No caravan shall be occupied in any manner, which shall or may cause the occupation thereof, to be or become a protected tenancy within the meaning of the Rent Acts 1968 and 1974; and
 - (e) If any caravan owner is in breach of the above clauses their agreement will be terminated and/or not renewed upon the next expiry of their current lease or licence.

On request, copies of the signed agreement[s] shall be provided to the Local Planning Authority.

Reason: In order to prevent the caravans from being used as a permanent place of residence

8. Any caravan that is not the subject of a signed agreement pursuant to condition 5 shall not be occupied at any time.

Reason: In order to prevent the caravans from being used as a permanent place of residence.

9. The owners or operators of the Park shall at all times operate the Park strictly in accordance with the terms of the Schedule appended to this decision notice.

Reason: In order to prevent the caravans from being used as a permanent place of residence.

SCHEDULE

The Park operator must:

- 1. Ensure that all chalet users have a current signed agreement covering points (a) to (e) in condition 2 of the planning permission; and
- 2. Hold copies of documented evidence of the chalet users' main residence and their identity; this may comprise of utility bills, Council Tax bill, passport, driving licence or similar document; and
- 3. On request, provide copies of the signed agreement[s] to the Local Planning Authority; and

4. Require caravan users to provide new documentation if they change their main residence; and
5. Send all written communications to the main residence of the chalet user; and
6. Not allow postal deliveries to the caravan or accept post on behalf of the caravan users at the park office; and
7. Ensure that each caravan is to be used for holiday use only and that no caravan is occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence, of the user or occupant; and
8. Adhere to a code of practice as good as or better than that published by the British Homes and Holiday Parks Association.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

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

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

2.5 REFERENCE NO – 15/509664/OUT			
APPLICATION PROPOSAL Outline (Access being sought) application for residential development for up to 26 dwellings.			
ADDRESS Land to East of St Mary’s View, Newington, Kent ME9 7JW			
RECOMMENDATION – Grant of outline planning permission for residential development of up to 26 dwellings including 11 affordable homes and full permission for access arrangements subject to: 1) imposition of conditions and signing of Section 106 agreement/s for contributions towards: <ul style="list-style-type: none"> • Education (land acquisition and associated development); • Libraries; • Highways; • Greenspace (off site); • Provision of ‘wheelie bins’; • SPA mitigation; • A 5% Section106 monitoring charge; And for the provision of: <ul style="list-style-type: none"> • On-site affordable housing (40% - tenure to be agreed); • Dedication of land for a reptile receptor area; • Dedication of land for a planting buffer of minimum depth 10m to the eastern and northern boundaries of the site and within the land edged blue shown on Drawing DHA/10410/01. 2) Clarification of the required contribution towards KCC Highways improvements to Church Lane.			
SUMMARY OF REASONS FOR RECOMMENDATION Development would help to address the Council’s shortfall in housing supply including the supply of affordable homes in a sustainable location without serious harm to amenity, landscape, ecology, designated heritage assets, air quality or to the highway network and as such would represent sustainable development in accordance with the National Planning Policy Framework.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objections, neighbour objections and ratification of Section 106 agreement.			
WARD Newington	PARISH/TOWN COUNCIL Newington	APPLICANT Swann Construction (UK) LLP AGENT – DHA Planning	
DECISION DUE DATE 19/02/16	PUBLICITY EXPIRY DATE 01/01/16	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites)			
APP NO.	Proposal	Decision	Date
16/501266/HYBRID	Mixed use development to be accessed from the A2 and to include 113 dwellings together with a Class D1 (surgery) use building. Not yet determined		PENDING
SW/14/0486	14 dwellings with associated new access, garaging and parking at Parsonage Farm, School Lane Newington, 500m to the north of the site	APPROVED	May 2015

SW/82/0826	Outline application for 13 dwellings with garages	REFUSED & DISMISSED ON APPEAL	1983
SW/80/1434	Outline application for erection of 22 dwellings with 2 car spaces per dwelling	REFUSED	1981

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.1 The application site lies within the countryside, is approximately 0.75ha in area, rectilinear in shape and adjoins the north-east fringe of Newington. The site comprises the south western corner of a former fruit orchard, which extends a further 100m to the north and 200m to the east. The area of remaining orchard would be 4.85ha. The orchard is overgrown, having been abandoned more than 40 years ago. There is no built development within the site. The site rises slowly from north to south by approximately 6m. Cross falls are generally in the order of 1-2m, falling from west to east. The site does not lie within a flood risk area. It is not subject to any specific landscape designations.
- 1.2 St Mary's View is an cul-de-sac which lies on a north-south alignment and connects via a shorter east-west branch to Church Lane a classified road. A low railway bridge within Church Lane and to the south of the junction with St Mary's View restricts traffic above 3.5m in height. Church Lane connects to the A2 London Road a short distance to the south and with the rural hinterland of Newington to the north. Traditional terraced and semi-detached residential properties in conjunction with a later period 'Close' style terraced development lie along the western side of St Mary's View.
- 1.3 The southern boundary of the site adjoins the London to Dover railway line. The railway corridor traverses east to west and rises on an embankment above site level. Newington railway station is located approximately 800m to the south west and provides connections to Dover Priory, Ramsgate, Margate and London Victoria.
- 1.4 The northern site boundary, borders onto Newington Church Conservation Area which includes part of the retained orchard land. The tower to the Grade I listed Parish Church of St Mary dominates views looking north from St Mary's View. A Grade II listed farmhouse and Grade II listed Kiln Oast, lie a short distance to the north of the site but are substantially screened by 20thC residential development. There are no other heritage designations within or bordering the site.

2.0 PROPOSAL

- 2.1 Outline planning permission is sought with all matters (namely appearance, landscaping, layout and scale) reserved except for access, which is to be assessed as part of this application. All other reserved matters are to be considered only in terms of the principle of the development at this stage and not in detail. Layout drawings submitted with the application are therefore intended to illustrate only the extent and nature of development and to establish the means of access.
- 2.2 The application is as set out above for up to 26 dwellings and the indicative details suggest it could comprise a mix of detached, semi-detached, terraced and flatted

development, two-storey to eaves with pitch roof above. With the exception of a terraced 'Close' at the southern end of the site adjacent to the railway corridor, all properties would front St Mary's View. Site density would be in the order of 35 dwellings per hectare, with a lower density to the northern part of the site to reduce impact on the adjoining conservation area.

- 2.3 Multiple vehicular accesses to the site would be created directly off St Mary's View utilising drop kerbs to serve garaging and surface parking for the larger detached and semi-detached properties to the north of the site, while the smaller scale properties to the southern part of the site would use communal surface parking areas arranged around parking courts directly off St Mary's View. Overall a total of 41 allocated parking spaces and 6 visitor parking spaces are shown indicatively. The Design and Access Statement accompanying the application confirms that secure cycle parking would be provided for all of the 26 residential units. An access is also shown to be provided from St Mary's View, between the proposed houses, connecting to the retained orchard land to the east.
- 2.4 The application is supported by the following reports:
- Planning Statement;
 - Design and Access Statement;
 - Phase 1 Desk-Top Study/Contaminated Land Assessment
 - Protected Species Assessment;
 - Extended Phase 1 Habitat Survey & Protected Species Assessment;
 - Historic Environment/Heritage Desk-Based Assessment;
 - Air Quality Assessment;
 - Transport Assessment;
 - Arboricultural Survey;
 - Noise Assessment;
- 2.5 The application has been amended and the applicant has agreed to provide a 40% affordable housing contribution. Members may be aware that the application originally proposed a 30% contribution towards affordable housing.

3.0 SUMMARY INFORMATION

	Proposed
Site Area (ha)	0.75ha
Approximate Ridge Height (m)	7.5 – 8.5m (indicative)
Approximate Eaves Height (m)	Unknown
Approximate Depth (m)	Unknown
Approximate Width (m)	Unknown
No. of Storeys	2
Parking Spaces	41
No. of Residential Units	Up to 26
No. of Affordable Units	40% (11 units)
Density	Approximately 35 dwellings per hectare
No of bedrooms	Range of 1-4

4.0 PLANNING CONSTRAINTS

- 4.1 The site is located adjoining but outside of the village settlement boundary. There are no relevant National landscape designations.
- 4.2 The site is within the setting of Newington Church Conservation Area and the wider setting of a Grade 1 listed church building. There are no designated heritage assets on the site, and the site has not been identified as having Potential Archaeological Importance.
- 4.3 The site forms part of a former (traditional) orchard which is classified as Grade 1 Agricultural land and a UK Biodiversity Action Plan Priority Habitat. Kent Biodiversity Action Plans (BAPS) identify priority species and habitats for conservation and play an important role in delivering the objectives for biodiversity conservation. Whilst not necessarily enjoying legal protection, they provide a mechanism by which impact on habitat can be highlighted and can be a material consideration in the development control process and in accordance with Policy E10 of the adopted Local Plan positive measures should be encouraged to contribute to their conservation. It should however be appreciated that such land is not designated and is consequently not subject to statutory protection.
- 4.4 The site is located 2.2km south of the Medway Estuary and Marshes which is designated as a Site of Special Scientific Interest (SSSI), a Special Protection Area (SPA) as well as a Ramsar Site.
- 4.5 The site is identified in the Swale Landscape Character and Biodiversity Supplementary Planning Document (SPD) 2011, as lying within the 'Iwade Arable Farmlands'.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.1 National Planning Policy Framework (NPPF)
- 5.2 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) are particularly relevant given the status of the emerging Local Plan.
- 5.3 The NPPF sets out the Governments position on the planning system explaining that *“The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system. 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 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 the Framework taken as a whole; or*
 - *Specific policies in this Framework indicate development should be restricted.”*

- 5.4 At paragraph 18 the NPPF states that *“The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”*
- 5.5 At Paragraph 47 it states that *“planning authorities should meet local housing needs and identify five year housing land supply with an additional 5% buffer rising to 20% where the shortfall would be significant”*. Paragraph 49 states *“that housing applications should be considered in the context of the presumption in favour of sustainable development”* and that *“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.”*
- 5.6 Paragraphs 47-55 seek to significantly boost the supply of housing. Para. 49 of the NPPF confirms that the lack of a 5-year land supply triggers the presumption in favour of sustainable development as set out by NPPF para. 14. It is necessary to determine what the relevant policies for the supply of housing are in order to identify which are out of date. What constitutes a policy for the supply of housing has been the subject of legal judgement, which can be interpreted as either policies that have specific and direct impacts on housing supply or more indirect, but significant impacts on supply. Regardless of the approach taken, decision makers can and do take into account whether certain aspects of policies accord with the NPPF.
- 5.7 Paragraph 64 of the NPPF states *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*
- 5.8 Paragraph 112 goes on to say *“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”*
- 5.9 The Local Plan
- 5.10 The Development Plan for Swale comprises the adopted 2008 Local Plan as amended by paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 in respect of those policies directed to have expired as of 20th February 2011. The emerging Local Plan (Bearing Fruits 2031 Publication Version), is at an advanced stage and as such carries some weight.
- 5.11 Local Plan 2008 relevant policies include:
- SP1 (Sustainable Development)
 - SP2 (Environment)
 - SP3 (Economy)
 - SP4 (Housing)
 - SP7 (Transport and Utilities)
 - SH1 (Settlement Hierarchy)
 - TG1 (Thames Gateway Area)
 - E1 (General Development Criteria)
 - E6 (Countryside)
 - E9 (Protecting the Character and Quality of the Borough’s Landscape)

- E10 Trees and Hedges
- E11 Protecting and enhancing the Borough's Biodiversity and Geological Interests
- E19 (Good Quality Design)
- H2 (Providing for New Housing)
- T1 (Providing Safe Access to the Highway Network)
- C2 (Housing Developments and the Provision of Community Services and Facilities)
- C3 (Open Space within Residential Development)

5.12 Members should note that Policy SP1 (Sustainable Development) of the adopted Local Plan outlines the Council's approach to sustainable development stating:

"In meeting the development needs of the Borough, proposals should accord with principles of sustainable development that increase local self-sufficiency, satisfy human needs, and provide a robust, adaptable and enhanced environment.

Development proposals should:

1. *Avoid detrimental impact on the long term welfare of areas of environmental importance, minimise their impact generally upon the environment, including those factors contributing to global climate change, and seek out opportunities to enhance environmental quality;*
2. *promote the more efficient use of previously-developed land, the existing building stock, and other land within urban areas for urban and rural regeneration, including housing, mixed-uses and community needs;*
3. *ensure that proper and timely provision is made for physical, social and community infrastructure;*
4. *provide a range and mix of housing types, including affordable housing;*
5. *provide for sustainable economic growth to support efficient, competitive, diverse and innovative business, commercial and industrial sectors;*
6. *support existing and provide new or diversified local services;*
7. *promote ways to reduce energy and water use and increase use of renewable resources, including locally sourced and sustainable building materials;*
8. *be located so as to provide the opportunity to live, work and use local services and facilities in such a way that can reduce the need to travel, particularly by car;*
9. *be located to promote the provision of transport choices other than the car;*
10. *be of a high quality design that respects local distinctiveness and promotes healthy and safe environments; and*
11. *promote human health and well-being."*

5.13 Emerging Local Plan 'Bearing Fruits 2031' relevant policies include:

- ST1 (Delivering Sustainable Development in Swale)
- ST3 (Swale Settlement Strategy)
- ST5 (Sittingbourne Area Strategy)
- CP2 (Promoting Sustainable Transport)
- CP3 Delivering a wide choice of high quality homes
- CP4 (Requiring Good Design)
- CP7 (Conserving & Enhancing the Natural Environment – Providing for Green Infrastructure)
- DM6 (managing transport demand and impact)
- DM7 Vehicle Parking
- DM8 (Affordable Housing)
- DM19 Sustainable Design and Construction
- DM21 Water, flooding and drainage
- DM24 (Conserving and Enhancing Valued Landscapes)

- DM25 (The Separation of Settlements – Important Local Countryside Gaps)
- DM28 (Biodiversity and Geological Conservation)
- DM29 Woodlands, trees and hedges
- DM31 (Agricultural Land)
- DM33 Development affecting a conservation area

A report is to be taken to a meeting of the Local Development Framework Panel scheduled for 19th May dealing with site allocations in the Borough. Members will note that this site is not proposed to be allocated. It is also worth noting that even if the Council agrees the approach set out in this report it will not immediately have a five year housing land supply.

5.14 The Strategic Housing Land Availability Assessment 2013/14 (SHLAA)

- The Council published its 2013/14 SHLAA update in May 2015. The larger orchard site including the much smaller application site were assessed jointly through the Council's Strategic Housing Land Assessment (Ref: SW/041) in preparation for the EIP. At that time it was acknowledged that in the event additional land was needed to meet the Council's Objectively Assessed Need, this site would not be suitable for development. In addition to the SHLAA, the Council has worked with consultants to draw up a ranking of preferred non-allocated site options. The larger orchard site did not perform well. The following analysis was made: *'SW/041 Land off Church Road, adjacent to St Mary's View, Newington – 5.71 hectares, located to the North East of the village. Traffic from this site would reach the A2 via Church Lane and therefore meet the A2 in the centre of the Air Quality Management Area (AQMA). Also, heritage is a major constraint as the northern edge of the site intersects with the Newington Church Conservation Area. Access to the site is problematic; as a former orchard there is likely to be biodiversity value; and the site comprises best quality agricultural land'*. These matters are considered as material considerations in the determination of this application and will be addressed further within this report

5.15 Swale Landscape Character and Biodiversity Supplementary Planning Document

- The SPD was adopted in 2011 and the descriptions and guidelines relating to landscape type and character areas are applicable as material considerations. In accordance with the SPD, Members will note that the Iwade Arable Farmlands character area, which this site falls within, is described as being in poor overall condition and of moderate sensitivity.

6.0 LOCAL REPRESENTATIONS

6.1 There have been 31 letters/emails of objections which can be summarised as follows:

- Generation of additional traffic will exacerbate congestion in Church Lane and in particular around its junction with the A2. Church Lane is narrow and unsuitable for the volume and size of modern traffic. It is seriously congested as a result of resident's parking on the highway and there being few passing places. Drivers experience extreme difficulty progressing against the flow of traffic during peak morning and afternoon 'school-runs' to Newington Primary School. Due to the narrowness of the lane, wider commercial vehicles frequently mount the narrow pavement. Egress from St Mary's View onto Church Lane is currently problematic and will be exacerbated;
- The proposal would deplete parking space currently available in St Mary's View;

- Air pollution would increase – the High Street is very narrow and funnels and concentrates traffic fumes;
- The proposal has not factored in the cumulative impact of multiple development proposals in the locality;
- Other sites better suited for residential development;
- Contrary to Local Plan Policy and in particular Policy E6 which seeks to protect land outside of the defined settlement areas unless otherwise designated;
- Infrastructure in Newington, including public travel services, shopping and the capacity for drainage and power supply has deteriorated – new development would stretch capacity;
- An unsustainable location due to impact on highway network and lack of job opportunity;
- Aesthetics of the proposal not in keeping with the area and no play-space provision within the site or on the north side of the A2.
- Would have a detrimental impact on biodiversity including protected species;
- Would result in the loss of good quality agricultural land.

7.0 CONSULTATIONS

7.1 Newington Parish Council: Objection

- The development would lie outside the Local Plan settlement boundary. The document has been prepared having regard to local knowledge in order to identify locations for development that would not increase air pollution, exacerbate traffic problems or reduce greenfield land when brownfield sites are available. The land to the east of St Mary's View is not a brownfield site but is instead good agricultural land. Following the discontinuance of agricultural activity the site is now wild orchard with some significant tree and wildlife including endangered species.
- The loss of this land with permeable soil will inevitably increase the existing drainage problems, as the site drains to Iwade Road which already experiences significant flooding in and following periods of wet weather;
- Church Lane is the only road (in the village) north of the A2 providing access to Breach, the Enterprise Centre, Lower Halstow and the much-enlarged Iwade. It is narrow and is used by residents for parking and is used as a 'rat run' for the railway station and routes to the Medway towns resulting in gridlock during busy periods such as during the 'school-run' and back-up of traffic around the junction of St Mary's Lane with the A2. It is noted that the traffic census submitted by the applicant was taken during a period of low activity and is therefore unrepresentative.
- The proposed level of dedicated on-site parking is inadequate and would result in additional on street parking problems in Church Lane. The level of service provided by bus and rail companies would not address the needs of prospective residents due to a reduction in frequency and limitations of the service with no bus service at all on Sundays.
- In addition to 10 houses built in 2011 within Vicarage Close opposite St Mary's View, within the past year, planning permission has been granted for 5 houses in the Vicarage garden, 14 houses in School Lane and 5 houses on High Oak Hill. The cumulative effect of traffic associated with these 34 houses in association with the current proposal for 26 will have an increasingly serious effect on a road

(Church Lane) with no capacity for road widening. As such the proposal is unsustainable.

- Air quality in Newington exceeds EU levels and is of particular concern. Local Planning Authorities have a responsibility to seek compliance and further building in Newington would only make pollution worse.
- **Note:** DHA Transport has responded to resident concerns. Their comments can be summarised as follows:
 - a) Traffic on A2/ Church Lane: DHA Transport has countered the argument that traffic data was collected out of school opening hours. Surveys were carried out when the school was still in session and the survey carried out during December was undertaken in the last week of term prior to the Christmas holidays when traffic flows would be expected to be higher. Furthermore the traffic relating to the school will be outside of the typical peak therefore there is a minimal impact on the flow of traffic. On-site observations have shown that even when there is school traffic there are no material concerns with respect to the free flow of traffic;
 - b) Committed Development Traffic Flows: The transport Statement has taken into account the relevant cumulative impacts as a result of permitted development within the locality of the site. Any traffic which is not currently on the network due to existing sites operating below capacity would be minimal and of no material concern;
 - c) Parking Provision: The Parish Council has queried the level of proposed site parking. It was noted that during a site visit, minimal parking takes place on this section of St Mary's View therefore the provision of dropped kerbs would have no material impact. As the application is in outline, the level of parking will be considered with respect to the standards set out in KCC Interim Guidance assuming a rural location.

7.2 Environmental Protection Team Leader states that :

- An Air Quality Assessment has been submitted which concludes that there will be little or no impact on existing air quality as this is a relatively small development.
- The assessment uses accepted methodology and compares the effect of this development on the nearby Air Quality Management Area (AQMA) as well as the predicted levels of dust that will be generated during the construction process.
- No demolition is to take place and it is claimed that the amount of traffic generated as a result of development will be minimal. However it is recognised that as this is a highly congested neighbourhood with a narrow access road, extra vehicles will only make air quality worse.
- A Phase 1 Desk Top Study of the site has been submitted. The Study recommends that although the historical use of the land was agricultural, a Phase 2 intrusive investigation should be carried out. Conditions should be imposed in order to address this requirement and where necessary provide remediation measures.

- As there is potential for noise during construction disturbing the occupants of neighbouring property, a condition is recommended restricting the hours of working.
- No objection subject to imposition of conditions.

7.3 Kent Police comment that :

- The applicant has considered crime prevention and has attempted to apply the seven attributes of 'Crime Prevention through Environmental Design' (CPTED) in accordance with the NPPF and the Kent Design Initiative (KDI) 'Design for Crime Prevention' April 2013.
- Whilst it is appreciated that this is an outline application there are concerns about aspects of the proposal that will need to be addressed in order to reduce the opportunity for crime. It is therefore recommended that should permission be granted, a condition be imposed requiring the incorporation of measures that would minimise the risk of crime. Should a condition be deemed inappropriate it is recommended that an Informative be added advising engagement with the Kent Police Crime Prevention Design Advisors (CPDA's) prior to submission of reserved matters.

7.4 Lower Medway IDB

- The site of this proposal is outside of the IDB's district but drains via ordinary watercourses to Newington Drain (L82) which is IDB maintained. The proposal therefore has the potential to affect the Board's interests. However, provided that surface water runoff is restricted to that of the Greenfield site with on-site storage provided to accommodate the 1 in 100 year rainfall event plus Climate Change run-off rate, ideally by the use of open swales as part of a sustainable urban drainage system (SUDS), the Board's interests should not be affected. A planning condition requiring submission of details is required.

7.5 Southern Water

- Southern Water Developer Services advise that they cannot accommodate the application requirements without the provision of additional local infrastructure. The proposed development would increase flows into the wastewater sewerage system and as a result increase the risk of flooding in and around the existing area, contrary to paragraph 109 of the NPPF. However Section 98 of the Water Industry Act 1991 provides a legal mechanism through which the appropriate infrastructure can be requested by the developer to accommodate the proposal.
- Should the LPA be minded to approve the application, imposition of a pre-commencement condition requiring submission of a drainage strategy is recommended and an informative should be attached advising as to the requirement for formal agreements between the applicant/developer and Southern Water and in respect of the long term maintenance of the proposed Sustainable Urban Drainage System (SUDS).

7.6 KCC Highways:

- Although the scale of proposed development is below the normal Transport Assessment (TA) threshold, given the sensitive location the applicant has deemed it appropriate to submit a TA in this instance;
- Although I am aware that blockages do regularly occur and that there are local concerns relating to traffic generated by the nearby primary school and parking north of the A2, it is anticipated that residents of the development would plan car journeys to avoid making car based journeys using Church Lane during such times, and that walking to the primary school would be both preferred and more convenient. I do consequently concur with the Traffic Assessment that the development would be unlikely to have a material impact on traffic movements during the school traffic peak periods;
- As far as vehicle movements at the relevant Church Lane junctions with the A2 and St Mary's View are concerned, the development does not give rise to any performance issues, as they are both expected to operate within capacity. Adequate visibility sight lines are available at the St Mary's junction and although the A2 junction is sub-standard in current design guidance terms, there is no relevant accident record associated with its use, and the scale of development would not have a material impact on the operation of it;
- Parking along Church Lane associated with car ownership and the lack of on-site residential parking, the lack of passing places and poor visibility is the primary cause of congestion in Church Lane. It would therefore be appropriate for the scheme to provide some mitigation to assist movement and a contribution to fund the implementation of further waiting restrictions and formalise passing places.
- Given the issues with Church Lane it will be appropriate to control construction vehicle movements through condition, so that these avoid conflict with school traffic and other sensitive periods on the highway network.

7.7 KCC Ecology

- The ecology team is satisfied that the consultants have a good understanding of the ecological constraints associated with development of the site;
- Providing there are no long term plans to develop the remainder of the orchard it is likely that the ecological interest of the wider area will be retained;
- The following surveys have been carried out: Phase 1 Scoping Survey; Bat – Activity and Emergence; Reptile Survey; Badger Survey; Ad hoc bird survey. The surveys have confirmed that the following are present within the site: A good population of slow worms and common lizards; Two trees (T1 and T2) with suitable features for roosting bats (although none recorded during emergence surveys); Nine species of bats foraging within the site; Suitable habitat for breeding birds and at least nine species of breeding birds recorded within the site;

- The proposed development will result in the complete loss of habitat and the ecological report has made recommendations for the proposed mitigation to be implemented if planning permission is granted;
- Additional information has been provided regarding a proposed offsite reptile receptor site. The receptor site will be located within the retained orchard, adjacent to the proposed development site, along the boundary with the railway line (on land within the applicant’s control). The area currently has low suitability to be used by reptiles as it is heavily overgrown, and KCC Ecology is satisfied that the proposed enhancements will increase its suitability;
- If planning permission is granted the proposed ecological enhancements must be implemented and established prior to the reptile translocation. A detailed reptile mitigation and management plan must therefore be submitted for approval prior to the commencement of the development. A contribution is also sought for the ongoing management of the receptor area.

7.8 Council’s Housing Officer states that :

- I have now sought guidance from planning policy and can confirm that we need to apply some of the elements of the new affordable housing policy (DM8) as detailed in the emerging local plan. This now means that a higher affordable percentage for rural housing needs to be applied along with a change to tenure split of the affordable homes also needs to be considered.
- We would seek 40% affordable housing delivery to provide 11 affordable dwellings.
- I cannot find any detail on the proposed affordable mix, however the mix should be a reasonable and proportionate mix across the site:

Unit type	Total on site	40%
2BF	6	3
2BH	5	2
3BH	10	4
4BH	5	2

- As per DM8, 90% of the units must be for affordable rent (10 dwellings) and 10% for shared ownership housing (1 dwellings). However due to recent changes with grant funding for affordable homes it has been agreed to take a sensible and reasonable approach to tenure split, therefore we are open to discussion and am aware that flexibility may need to be applied.
- I can confirm that there is a requirement for affordable housing in the Newington and Sittingbourne areas for all types and sizes of accommodation.
- We would seek wheelchair adapted housing, the number of which would be agreed with the preferred Registered Provider (RP).
- This site may be seen as suitable for Starter Homes. As policy and legislation around this has not yet been finalised, further guidance should be sought if required.

7.9 Greenspaces Manager

- Raises no objection subject to contribution of £861 per dwelling to be spent on off-site improvements to open space.

8.0 **APPRAISAL**

8.1 Principle of development - Land supply and housing target

8.2 The key consideration from a policy perspective centres on whether planning permission should be granted for residential development which lies outside the defined urban confines of Newington. The adopted Local Plan 2008 forms the basis for calculating housing land supply. The KCC Housing Information Audit 2014/2015 indicates that the Borough has a 4.13 year housing land supply, as measured against the 2008 Adopted Local Plan target. As part of the Inspector's Interim Findings on the emerging Swale Borough Local Plan a higher housing target is proposed of 776 dwellings per annum. The Inspector has therefore recommended that the Council should make additional allocations to meet this. Against the revised target, this scheme would make a small contribution to housing supply and housing needs generally. Given that paragraph 47 of the NPPF seeks a significant boost in the supply of housing, these benefits (of bringing forward a site not allocated in the Plan for development), could be welcomed.

8.3 The shortfall in allocated residential sites is being addressed through Proposed Modifications to the Plan which are being considered by the Local Development Framework Panel on 19th May. The LDF Panel Report recommends allocations which are anticipated to be sufficient to meet the Council's resulting new 5 year housing land supply requirement.

8.4 This site formed part of the larger orchard site (Ref: SW/041) which was rejected as not suitable for development, principally due to traffic, biodiversity, heritage and loss of agricultural land implications.. -- The larger orchard site including the much smaller application site was assessed through the Council's Strategic Housing Land Assessment (Ref: SW/041) in preparation for the EIP. At that time it was acknowledged that in the event additional land was needed to meet the Council's Objectively Assessed Need, this site would not be suitable for development. In addition to the SHLAA, the Council has worked with consultants to draw up a ranking of preferred non-allocated site options. The larger orchard site site did not perform well. The following analysis was made: *'SW/041 Land off Church Road, adjacent to St Mary's View, Newington – 5.71 hectares, located to the North East of the village. Traffic from this site would reach the A2 via Church Lane and therefore meet the A2 in the centre of the Air Quality Management Area (AQMA). Also, heritage is a major constraint as the northern edge of the site intersects with the Newington Church Conservation Area. Access to the site is problematic; as a former orchard there is likely to be biodiversity value; and the site comprises best quality agricultural land'*.

8.5 Although the site is not allocated for development, paragraph 49 of the NPPF confirms that where there is no five year housing land supply, schemes on unallocated land should be considered under the presumption in favour of sustainable development (Paragraph 14 of the NPPF). This means that for the time being this site could be considered acceptable for development, subject to an assessment of all other impacts to include:

- Sustainability;
- Site Access;
- Impact on the Highways network;
- The impact on ecology;
- The loss of agricultural land;
- The loss of agricultural land;
- The implications for air quality;
- The effect on the landscape character and countryside;
- Design, layout and the density of development;
- Developer Contributions.

8.6 Sustainability

Paragraph 14 of the NPPF confirms that in respect of housing *'applications should be considered in the context of the presumption in favour of sustainable development'*. As part of this process the NPPF sets out three dimensions to sustainable development, these being, 'economic, social and environmental'. The economic dimension requires that there should be *'sufficient land of the right type, in the right place and at the right time to support growth'*. In this context the proposal would help to satisfy an identified need for housing while planning contributions arising from development would subsidise local infrastructure and provide social housing in accordance with Plan requirements.

8.7 Newington is a highly sustainable location that is identified in the Local Plan as a Rural Local Service Centre. The site has good access to rail and bus services, a primary school and is within walking distance of community facilities, a range of shops and other consumer outlets. In respect of Environmental considerations, the proposal would make efficient use of land, would through mitigation measures not impact unacceptably on ecology or heritage and would result in a form of development in keeping with the character of built development in this part of Newington.

8.8 Site Access

St Mary's View is an adopted, unclassified cul-de-sac, with development laid out along its western flank and its eastern flank undeveloped along the full length of the application site. There is currently no formal access to the land from St Mary's View and no relevant highway constraints such as resident or visitor parking restrictions.

8.9 It is proposed that the larger houses to the north of the site would be accessed by a series of drop kerbs within the highway. To the south of the site two accesses would be constructed that would serve parking courts. There are no constraints such as might arise from sightline, highway design or road safety implications. Overall the proposed site access arrangements would not impact unacceptably on current levels of (informal) parking and would not result in on street parking pressure. Access arrangements are therefore considered acceptable subject to detailed design.

8.10 Other Highway considerations

8.11 The potential impact of additional traffic on the local road network has been the primary reason for third party objection to the proposal. Church Lane is narrow, and as a consequence of resident parking along much of its length, is reduced effectively to a single lane carriageway with passing opportunity provided only between gaps between parked cars. Residents have drawn attention to the incidence of larger

vehicles mounting the footway in order to pass and to the extent of congestion occurring primarily during school 'run' periods in the morning and afternoon resulting in a build-up of traffic at the junction of Church Lane with the A2 High Street and further depleting air quality in the locality. This is a real concern and cause for frustration for people needing to travel in both directions on a regular basis.

8.12 Due to the proximity of the primary school, railway station, bus service and local shops and the resulting sustainability of the location it is anticipated that many future residents of the development would take the opportunity to walk to the school or local shops and make beneficial use of public transport in preference to using cars. Although Kent County Council has commented that the relatively small scale of development would be unlikely to have an unacceptable impact on the highway network, in order to alleviate congestion it is considered reasonable for developer contributions to be sought for the implementation of measures that would improve passing opportunities within Church Lane, to be achieved by formalising roadside parking.

8.13 Based on the indicative drawing details submitted with the outline application the level of car parking would accord with KCC parking standards.

8.14 Ecology

A Phase 1 Ecology Survey was carried out by Corylus Ecology in June 2015. The desk study identified that the site is located 2.2km south of the Medway Estuary and Marshes which is designated as a Site of Special Scientific Interest (SSSI), a Special Protection Area (SPA) as well as a Ramsar Site. The nearest statutory designated site for terrestrial habitats is Queensdown Warren SSI 3.3km to the south-west. Hawes and Wardell Wood ancient woodland is located 360m to the north. The site itself is classified as Traditional Orchard which is a UK Biodiversity Action Plan Priority Habitat. Concerns have been raised that development would impact unacceptably upon site ecology and biodiversity. Both the Parish Council and residents have identified a range of animal, bird and reptile activity within the site and there is little doubt that this would be affected by development. However the site forms part of a significantly larger tract of land with similar ecological characteristics and it would not be unreasonable to anticipate species migration to that larger area, subject to satisfactory mitigation.

8.15 The Ecology Survey has identified the presence of reptiles (slow worm and common lizard) and Kent County Council Ecological Service has confirmed that a proposed reptile receptor site measuring approximately 0.18ha in area, to be located on land under the control of the applicant outside the application site boundary, would provide an acceptable standard of mitigation for these species subject to a satisfactory management regime. No bat roosts have been identified and mitigation measures to maintain foraging opportunities for both the local bat population and other species are to be incorporated into the development, which would accord with the NPPF principle of encouraging biodiversity in and around developments. In respect of protected species, particularly bats and ground nesting birds, it is considered that satisfactory levels of protection can be afforded by imposition of planning conditions.

8.16 Impact on Swale SPA/ Ramsar site - The application site is located within close proximity of the Swale Special Protection Area (SPA) and RAMSAR site, sites designated under European legislation for the conservation of wild birds. Under this legislation the Council has a duty to safeguard the habitats of migratory birds. Recent evidence commissioned by Swale Borough Council in conjunction with other Kent

authorities has demonstrated that for all housing developments within a 6km distance from an access point onto the SPA there is the potential for disturbance to birds, principally (but not entirely) due to dog walking.

- 8.17 As such, in order to meet our European duty, for all planning applications relating to residential development, the Council needs to screen applications under the Habitats Regulations to determine whether there are likely to be significant adverse impacts on the SPA. Where this is confirmed, a full Appropriate Assessment (AA) would then be triggered. Although the requirement for the Council to consider this is set out in European Law, it is clarified in planning terms in paragraphs 118-119 of the NPPF, together with Policy E12 of the adopted Local Plan and Policies CP8 and DM28 of the emerging Local Plan.
- 8.18 The North Kent Councils have agreed a draft approach by which developments may be able to provide mitigation to enable development to proceed and fulfil the necessary duty under the European legislation. In this instance in order to mitigate impacts the payment of a per-dwelling tariff – currently £223.58 per dwelling will be payable to be spent on off-site mitigation.
- 8.19 Site Trees – Local Plan Policy E10 ‘Trees and Hedges’ states that on sites proposed for development, the Council will protect trees (including old orchards) that make an important contribution to the nature conservation value of the site or surrounding area and that development proposals should retain trees as far as possible and that the Council will consider the objectives of Biodiversity Action Plans (BAP’s) when considering development. A similar thrust is taken by emerging Local Plan Policy DM29 ‘Trees and Hedges’.
- 8.20 The arboricultural report submitted by Tree Ventures that accompanies the outline application grades the trees in accordance with BS5837. The site consists primarily of self-regenerating areas of trees consisting of Damson thickets, Oak, Ash, Willow, Cherry, hazel, Sycamore and Hawthorn. A number of the old Apple trees that once formed part of an orchard are also present. Most of the trees present are young in age and as individual specimens are not of any particular arboricultural merit. However, as collective groups they do provide a landscape feature within which are a number of individual Oak trees that in time will become prominent specimens.
- 8.21 Although in outline form, the plans show an indicative layout which will result in the loss of most of the current vegetation. A number of the more prominent individual Oaks are however shown to be retained. Conditions are recommended requiring the submission of an arboricultural impact assessment (AIA), arboricultural method statement (AMS) and tree protection plan (TPP) all in accordance with British Standard 5837:2012. A detailed landscaping scheme will be required pursuant to Condition (1) below.
- 8.22 In order to reinforce the site boundary and provide mitigation for the impact of development upon the retained orchard a condition will be imposed requiring a 10m wide landscape tree planting buffer strip to be provided within the ‘blue line’ site boundary along the eastern and northern boundaries of the site.
- 8.23 The loss of agricultural land
- 8.24 The site has in the past been intensively farmed as a fruit orchard. It is understood that there has been no commercial cultivation of the land since 1973 and this would seem to be borne out by its current scrubland character. The site is identified on the land classification (Natural England) mapping as Grade 1 Best and Most Versatile (BMV) agricultural land. Policy DM31 of the emerging Local Plan emphasises that development will not be permitted unless: the site is allocated in the Local Plan, there

is no alternative site on lower grade land and the development would not result in the remainder of the agricultural unit becoming unviable. Although there are no known factors inhibiting the use of the land for agricultural purposes the fact that it is no longer used for economic farming production does not degrade this classification even if it challenges the viability consideration. Although Policy DM31 is not yet an adopted policy given the current status of the emerging plan, weight can be given to it.

- 8.25 The issue of loss of BMV land is addressed within the NPPF whereby it states that Local Planning Authorities should seek to use areas of poorer quality land in preference to that of a higher quality for development. As well as economic benefits, as indicated within the NPPF, there are other benefits of BMV land. These include social/ strategic benefits in terms of securing the best land for local and national food production and environmental benefits in that better quality land is generally easier and more efficient to work, not unduly subject to drought or to bad drainage and more likely to achieve good and consistent yields. Against this it can be argued that the application site represents only a smaller portion of a larger site that is to be undeveloped and that its loss would be substantially below the 20ha threshold considered by the Government to be significant.
- 8.26 On a separate note it should be recognized that a return to active agricultural use would, depending upon the specific method of farming, wholly or partially negate the ecological and biodiversity interest the site has acquired through the passage of time.
- 8.27 Heritage
- 8.28 The site lies within the wider setting of a Grade I Listed church building, a Grade II listed Farm house and a Grade II listed Oast house. While the church tower would be visible at ground level from within the site the converse would not apply. The proposed housing would be of a form, scale and character similar to existing residential development located between the site and the listed buildings. Where not screened by existing development the proposed development would be screened by existing tree and ground cover. As such the special architectural and historic interest of the listed buildings and their settings would not be seriously harmed. The lack of harm to heritage interests would be positive in terms of the environmental strand of sustainable development and should be afforded weight in the decision making process.
- 8.29 The development site would adjoin the southern side of Newington Church Conservation Area. At this juncture the Conservation Area boundary follows an undefined east-west alignment across the former orchard site. In order to mitigate the impact of the development on the Conservation Area boundary there would be the opportunity for reinforcement of the landscaping adjoining the site boundary. This would ensure a satisfactory transition between the retained orchard and the proposed development and minimise the suburbanising effect of the scheme on the open area to the east, and views therefrom and Members will note the proposed S106 to this effect.
- 8.30 The Council's Heritage Consultant has suggested that there may be merit in advancing the case for enhancement of the remaining retained orchard land. It is considered that a landscape buffer around the site to be secured through a S106 agreement would be both a reasonable requirement and sufficient for screening purposes and would preserve the setting and views into and out of the Conservation Area.

8.31 Air Quality

8.32 An Air Quality Assessment focusing on the potential impacts arising from development has been submitted. Air quality can be a material consideration in planning decisions. The NPPF states that *'the planning system should contribute to and enhance the natural and local environment by 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'*.

8.33 Without mitigation the dust and fume emission magnitude arising from the construction phase has been identified as being low to medium risk, which with mitigation can be reduced to an acceptable level. The Council's 'Newington Air Quality Management Area' incorporates the A2 high Street through Newington and extends as far as the site entrance. The Air Quality Assessment demonstrates that any change in predicted pollutant concentrations following completion of the proposed development would be negligible. The Environmental Health Officer has commented that *'Although there will be increasing levels of development around Newington which is already congested, and there are concerns in respect of the cumulative impact of such development, the scale of development in this instance would in this case not be so significant as to warrant refusal'*.

8.34 Impact on character of countryside

8.35 Although the site is located within the designated countryside it adjoins the built up boundary of Newington as set out in the adopted and emerging Local Plan. It does not form part of nor adjoin a nationally designated landscape. In accordance with Supplementary Planning Document 'Swale Landscape Character and Biodiversity Appraisal', the site lies just within the 'Iwade Arable Farmlands' which are characterised by very gently undulating rural landscapes that may traditionally have supported fruit growing which has now given way to cereal production. The SPD concludes that the farmlands are in poor condition largely as a result of agricultural intensification with many field boundaries lost, with remnant orchards and other fragmented features providing reference to the historic landscape pattern. Guidelines for the Iwade Arable Farmlands focus on restoring the rural environment where possible through planting and restoration initiatives. A priority is seen as the conservation and careful management of the older, traditional orchards particularly where biodiversity can be enhanced.

8.36 As the Council does not currently have a 5-year housing land supply of sites, this means that policies relating to the protection of the countryside could as a result be considered out of date. However, it is important to note that the overarching aim of Policy E6 is to protect and enhance the quality, character and amenity value of the wider countryside and that aim fully accords with the NPPF Core Planning Principle *'to take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities'*. As such, the policy can be given weight in assessing the impact of the proposal on the character of the countryside.

8.37 The proposal site does not lie within a protected gap as defined under the Emerging Local Plan Policy DM25. In this case the site is not exposed to wider public views. It is screened to the south by the railway line and from the north and east by vegetation within the larger orchard site. Whereas the North eastern boundary of Newington would be marginally re-defined, it is doubtful that this would be evident to long range views. Consequently, given that the larger orchard would be retained there would not

be any significant intrusion into the Iwade Arable Farmlands, or loss of openness or rural character to the countryside beyond St Mary's View.

8.38 Design and Layout

8.39 Detailed design and layout will be considered at the Reserved Matters application stage. The illustrative design in association with the Design and Access Statement demonstrates that the proposal for up to 26 houses can be satisfactorily accommodated on the land without compromising local character or the residential amenity of neighbours or future occupants of the site.

8.40 Contributions

8.41 Kent County Council seek a total of £281,823.12 in planning contributions. This sum is broken down as follows:

- Primary education – The proposal gives rise to additional primary school pupils during occupation of this development. A contribution would be required towards Phase 1 of the Quinton Road, new Primary School and would amount to £86,000;
- Land for primary education – A contribution in the sum of £43,563.76 would be required towards any Primary School land acquisition. This sum would be re-assessed immediately prior to KCC acquiring the freehold transfer of the site to reflect the actual price paid. Any balance would be refundable to the applicant;
- Secondary education – A contribution in the sum of £109,469.40 would be required towards the building of Phase 3 of the new Secondary School on land to the north of Quinton Road, Sittingbourne;
- Land for secondary education - A contribution in the sum of £41,541.44 would be required towards the acquisition of such land. The sum would be re-assessed immediately prior to KCC acquiring the freehold transfer of the site to reflect the actual price paid. Any balance would be refundable to the applicant;
- Libraries – A contribution of £1248.52 would be required for the provision of additional library books;
- Highway Contributions (KCC) - With regard to the local highway network, Members will have noted that Kent Highways Services raise no objection (see Paragraph 7.7 above) subject to a contribution to facilitate improvements in Church Lane to assist traffic movements and ameliorate congestion. At the time of writing this report the sum required for these improvements has not been established. The applicant has however agreed in principle to contribute towards an improvement scheme. It is anticipated that the contribution sum will be reported to committee.

8.42 Swale Borough Council Contributions:

- Greenspace – A contribution in the sum of £22,406.80 (£861.80 per dwelling) would be required for improvements to open space in the village.

- Mitigation in the sum of £223.58 per dwelling (total £5798) would be required towards the SPA; The Section 106 Agreement will need to accommodate this and include a trigger for the payment to be made.
- A financial contribution is also required in respect of the provision of wheelie bins allowing for two per house and one per flat currently costing £39.47 per bin. The corresponding contribution based upon the indicative scheme would be £1893.62.
- Affordable Housing – The provision of 40% affordable housing (11 homes) is required on-site in accordance with the Council's emerging Local Plan Policy DM8 requirement. The applicant has agreed to uplift from the figure of 30% as submitted to 40% in accordance with the emerging Plan. The Council has indicated a willingness to negotiate the nature of tenure and the mix of affordable dwelling sizes and an update will be reported to Members at the meeting.
- Section 106 Monitoring and administration fee.
- With regard to the provision of an off-site reptile receptor, the Section 106 agreement will need to include wording to ensure that habitat management is properly safeguarded in perpetuity and that the receptor site can be accessed for monitoring purposes.
- The Section 106 agreement will need to encompass provision for the dedication of land around the site for a landscape buffer. In order to provide a satisfactory degree of screening, a 10m wide planting swathe is recommended to the northern and eastern site boundaries.

8.43 The applicant has agreed to all the above contributions.

9.0 Conclusion

- 9.1 As the proposed development does not accord with the Adopted Local Plan the primary justification centres on housing necessity (as required under para 112 of the NPPF), due to the lack of 5-year housing land supply. It should be acknowledged that the proposals will achieve social gains in terms of the provision of new housing (including the provision of affordable homes) in an area with an acknowledged shortfall and with good access to existing services. In turn this makes a positive contribution toward the economic role of sustainable development. At the time of writing, potential alternative sites that may be more suitable have not been allocated.
- 9.2 A range of material considerations have been assessed and adverse impacts carefully considered and it is considered that concerns, particularly in respect of highways, ecology, landscape and the loss of agricultural land can be mitigated. The application, subject to signing of the Section 106 Agreement and imposition of planning conditions satisfies the tenets of all three NPPF requirements for sustainable development and should be approved. As such outline planning permission is recommended.

RECOMMENDATION – Grant outline planning permission subject to conditions as set out below, the signing of a suitably worded S106 agreement, and clarification of the Highways contribution required for improvements to Church Lane.

CONDITIONS

Reserved details

- 1) Details relating to the layout, scale and appearance of the proposed building(s), and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

Submission of details

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

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

Commencement of development

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

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

Development in accordance with approved plans

- 4) The development hereby permitted shall not be carried out otherwise than in complete accordance with the following approved plans and specifications:
DHA/10410/01 (Site Location Plan) and DHA/10410/03 (Indicative site plan);

Reason: In the interests of residential amenity

Sustainable construction

- 5) No development shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures will be 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 of the phase of development in question as approved, and retained as such in perpetuity.

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

Surface and foul water

- 6) 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. With regard to surface water drainage, the agreed details shall consist of a scheme using SUDS principles (and based upon a coherent SUDS Strategy for the entire site) and shall consist of a scheme that will limit runoff rates to those from the existing site and ensures that pollutants are contained within the areas to be developed, unless it has been demonstrated to the satisfaction of the Local Planning Authority that such a scheme cannot be delivered for the development hereby approved. The development shall then be implemented in accordance with the approved details.

Reason: In order to achieve an acceptable drainage scheme in the interests of minimising flood risk and ground water contamination.

Site datum

- 7) Details submitted pursuant to Condition (1) shall include cross-sectional drawings through the site, of the existing and proposed site levels and shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels.

Reason: In order to secure a satisfactory form of development having regard to the existing datum.

Underground ducting

- 8) Adequate underground ducts shall be installed before any of the buildings hereby permitted are occupied to enable telephone, broadband, gas and electrical services to be connected to any premises within the application site without resource to the erection of distribution poles and overhead lines, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no distribution pole or overhead line shall be erected other than with the express consent of the Local Planning Authority.

Reason: In the interests of residential amenity

Noise and Vibration Survey

- 9) No development shall take place until a noise and vibration survey in relation to the railway adjacent to the site has been carried out. The survey shall be in accordance with a protocol, details of which shall be submitted to and approved by the Local Planning Authority. The results, together with the proposed measures to ensure that the development overcomes any potential problems of noise and vibration, shall be submitted to and approved by the Local Planning Authority. The approved measures shall be implemented before the first occupation of the development hereby permitted and shall thereafter be maintained as such.

Reason: In the interests of the amenity of occupiers.

Details of external finishing materials

- 10) Prior to the commencement of any element of development, details (including samples where requested) of the external finishing materials to be used on that element of 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.

Construction and Environmental Method Statement

- 11) No development of the scheme hereby approved shall take place until a Construction and Environmental Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. This shall include details relating to:
- (i) The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the development site during the construction phase;
 - (ii) The loading and unloading and storage of plant and materials on site;
 - (iii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (iv) The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;
 - (v) Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
 - (vi) Measures to control mud deposition off-site from vehicles leaving the site;
 - (vii) The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);
 - (viii) The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site;
 - (ix) The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking;
 - (x) Lighting strategy for the construction phase, designed to minimise light spillage from the application site; and
 - (xi) Working hours;

Reason: To ensure the development does not prejudice conditions of residential amenity, highway safety and convenience, and local ecology, through adverse levels of noise and disturbance during construction.

Contamination

- 12) 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:
- 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) A site investigation based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- c) A remediation method statement (RMS) based on the site investigation results (b) and the detailed risk assessment (b). 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;
- d) A Closure Report shall be submitted upon completion of the works. The Closure Report shall include full verification details as set out in (c). This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean. Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

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

Landscaping implementation

- 13) No development shall take place until full details of 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 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.

Landscaping retention

- 14) 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 and encouraging wildlife and biodiversity.

Root protection of trees

- 15) Any excavation beneath the canopies of trees which are intended to remain or within one metre of any canopy edge shall be done by hand. Existing tree roots exceeding 2" in diameter shall be left bridging trenches and pipes and services shall be inserted under the roots. Any roots that may be accidentally severed shall be trimmed, cleaned and sealed with a bitumastic sealant.

Reason: In order to protect existing trees which are considered to be worthy of retention.

Protection of trees during construction

- 16) All trees to be retained must be protected by suitable fencing of a height not less than 1.2m at a distance as specified in Table 1 or Figure 2 of BS 5837 (1991) 'Trees in Relation to Construction' before any equipment, machinery or materials are brought on to the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within those area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

Reason: To safeguard the existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

Permanent parking

- 17) The details submitted pursuant to condition (1) above, shall show adequate land, reserved for the garaging and/or parking of cars (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land including garaging shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on reserved land (other than the erection of a private garage or garages) or in a position as to preclude vehicular access thereto, and 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.

Estate parking and associated roads

- 18) Prior to the occupation of the dwellings hereby approved, the proposed access roads, footways, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, vehicular crossovers, and carriage gradients, shall be constructed and laid out in accordance with details to be submitted and approved by the Local Planning Authority in writing before their construction begins. For this purpose plans and sections indicating as appropriate the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads and accesses are constructed and laid out in a satisfactory manner.

Construction of access

- 19) All access roads and turning heads between the site and the adopted highway shall be constructed and completed within 12 months of the commencement of the development. Vehicular cross-overs shall be constructed and completed prior to occupation of each related dwellinghouse.

Reason: To ensure that a satisfactory means of access is provided for the site.

Before the first occupation of any dwelling hereby approved the following works between that dwelling and the adopted highway shall be completed as follows:

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

Reason: In the interests of highway safety.

Archaeological field evaluation and mitigation

- 20) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of:
- (a) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the Local Planning Authority; and
 - (b) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record

INFORMATIVES

- (1) The applicant should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel 0330 303 0119) or www.southernwater.co.uk;
- (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.
- (3) Should any bats or evidence of bats be found, immediately prior to or during the works, work must stop immediately and Natural England contacted for further advice before works can proceed. All contractors should be made aware of it and provided with Natural England's Contact details: please refer to Natural England's website for these details (www.naturalengland.org.uk).

- (4) The applicant is advised to seek the input of the Kent Police Crime Prevention Design Advisors (CPDA's) to ensure that all efforts are made to incorporate the principles of Designing out Crime (A Kent Design Guide for Developers, Designers and Planners) into the design of any proposal.

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 in the processing of their application and 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 having regard to the provisions of the NPPF including the presumption in favour of sustainable development and the contribution that would be made towards housing supply the proposal subject to necessary mitigation, planning conditions and Section 106 agreement is considered acceptable.

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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PLANNING COMMITTEE – 26 MAY 2016

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 16/500627/FULL			
APPLICATION PROPOSAL Change of use of land for the stationing 3 residential mobile homes for low cost affordable homes.			
ADDRESS Marsh Bank Old Ferry Road Iwade Kent ME9 8SW			
RECOMMENDATION REFUSE			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The site lies within the countryside of the Borough where residential development is resisted in principle; it is remote from any shops, services, or public transport links and future residents would therefore be entirely reliant upon private vehicles; this is not considered to represent sustainable development. The proposal is therefore contrary to adopted and emerging local and national policy.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection and called in by Councillor Stokes.			
WARD Bobbing, Iwade & Lower Halstow	PARISH/TOWN Iwade	COUNCIL	APPLICANT Mr I Woolman AGENT BDB Design LLP
DECISION DUE DATE 30/03/16	PUBLICITY EXPIRY DATE 10/03/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
None.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is a parcel of ground situated between Marshbank Farm and the Old Ferry Road, close to the Iwade speedway track. It is generally flat and had recently been cleared at the time of the case officer's site visit.
- 1.02 To the west and north are the buildings and external storage associated with the Willowbank Industrial Estate (which has permission for Class B1 light industrial use), with the speedway further to the north. To the south are a number of gypsy / traveller pitches (Cricket Meadow) and a small touring caravan site, and to the east is open countryside.
- 1.03 The site lies approximately 1.1km from Iwade village centre.

2.0 PROPOSAL

- 2.01 The application seeks permission for the stationing of 3 static mobile homes for the purposes of providing affordable housing. (The applicant has offered to enter into a Section 106 agreement to ensure the units are retained as affordable.)
- 2.02 The mobile homes would sit in a roughly north-south line in the centre of the plot. Site access would be from a single point to the west, adjacent to the existing neighbouring buildings, and a central access road will lead to parking between the units. Each unit will have 2 parking spaces and a garden area.
- 2.03 The proposed mobile homes are of a standard design common throughout the Borough.

3.0 SUMMARY INFORMATION

	Proposed
Site Area	0.21ha
No. of Residential Units	3
No. of Affordable Units	3

4.0 PLANNING CONSTRAINTS

- 4.01 Area of Potential Archaeological Importance.

5.0 POLICY AND OTHER CONSIDERATIONS

Swale Borough Local Plan 2008

- 5.01 Policies E1, E6, H2 and RC3 of the adopted Local Plan are relevant. E1 is a general development policy which sets out a number of criteria to which all developments are expected to adhere.
- 5.02 E6 is the Council’s main policy in terms of rural restraint and it aims to protect the countryside for its own sake. The policy restricts residential development within the countryside unless it is expressly for the purposes of satisfying an identified local affordable need in accordance with policy RC3; housing for agricultural workers (again in response to an identified need); or for gypsies or travellers.
- 5.03 The caveats of E6 are supported by policy RC3, which states that new housing within the rural area will be met within the existing built up area boundaries, or *“exceptionally at sites where planning permission for residential development would not normally be granted, where proposals are specifically and wholly intended to meet an identified local affordable housing need of the community provided the promoter of the scheme demonstrates that:*
 - 1. *the identified need cannot otherwise be met within the confines of the built-up area, or failing this, on previously developed land adjoining the built confines of the settlement;*
 - 2. *the development is of a size and type suitable to meet the needs identified in a local housing needs survey;*
 - 3. *the site is well related to available village services and public transport;*
 - 4. *the proposal contains no element of general market housing;*

5. *there are no overriding environmental or highway objections; and*
6. *the scheme has the support of the local Parish Council.”*

5.04 Policy H2 states that new housing development will be allowed within the built up area or at specifically allocated sites. Outside of those areas development is expected to accord with E6 and RC3, above. A stumbling block to this policy, however, is that the Council has an identified 5-year housing supply shortfall. In such circumstances national guidance advises that the policy is not compliant with the aims of the NPPF, para. 49 thereof stating:

“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.”

5.05 This shortage / NPPF non-compliance was recognised by the Local Plan Inspector (in her consideration of the emerging local plan, ‘Bearing Fruits’), who consequently increased our annual supply figure to 776 dwellings per annum. The end result of this is, in essence, that the Council has to consider sites outside of the defined built up areas and current adopted allocated sites for new housing development to assist in meeting our 5yr supply target. Some of this need will be met through new allocations currently under consideration by the Planning Policy team, while some will come through consideration of windfall sites (such as the current application site). This does not mean, however, that the other policies noted in this section do not apply.

The emerging local plan; ‘Bearing Fruits 2031, Publication Version December 2014’

5.06 Policy ST1, similar to E1 of the adopted plan, is a general policy aimed to achieve sustainable development throughout the Borough. The most relevant criteria are:

4. Accord with the Local Plan settlement strategy; and
7. Deliver a wide choice of high quality homes by:
 - a. balancing levels of forecast housing needs with that which is deliverable;
 - b. providing housing opportunity, choice and independence with types of housing for local needs; and
 - c. keeping vitality within rural communities with identified housing needs, proportionate to their character, scale and role.

5.07 ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Para.6 of the policy states that *“locations outside the built-up area boundaries shown on the Proposals Map fall in the open countryside where development will not normally be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.”* In terms of the current application this means that, as with policies E6 and RC3 above, the proposed site is very much near the bottom of the list in terms of where officers would recommend new housing to be placed.

5.08 Policy ST5 sets the strategy for the Sittingbourne area, and reiterates the general thrust of ST3 with a localised focus. Para. 4 seeks to *“provide housing/mixed uses within the Sittingbourne town centre regeneration or other sites within urban and village confines, or where indicated by proposed allocations.”*

- 5.09 Policy CP2 states that new development will be located to minimise the need to travel for employment and services, and to facilitate sustainable transport choices.
- 5.10 CP3 aims to provide a wide choice of high-quality homes across the Borough. It aims to steer development to the built up areas and allocated sites, or to windfall sites *“except where the character of the site, its local context or environmental value determines otherwise,”* and to *“meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons.”*
- 5.11 Policy DM8 of the emerging Plan aims to ensure an adequate supply of affordable housing within the Borough. It states that developments over 10 units will have to provide a percentage as affordable; the size and type of affordable housing units must be in accordance with the needs of the area; and homes should be designed for the elderly, disabled or vulnerable, where possible.
- 5.12 Policy DM9 relates to rural housing exceptions, and states that *“planning permission for affordable housing (including pitches for Gypsies and Travellers) to meet local needs in rural areas will be granted provided [amongst others]:*
1. *The site accords with Policy ST3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*
 2. *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;*
 3. *A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*
 - a. *an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*
 - b. *a thorough site options appraisal; and*
 - c. *a prepared statement of community involvement that has sought to include the significant input of the Parish Council.”*
- 5.13 DM14 is a general policy similar to E1 of the adopted Plan, and sets out a number of criteria all developments are expected to accord with.

National Planning Policy Framework (NPPF)

- 5.14 Paragraph 14 states that *“at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.”* In respect of decision-taking it notes that LPAs should approve proposals that accord with the development plan without delay. It continues to note that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted *“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.”*
- 5.15 This is particularly relevant in terms of policy H2 of the Local Plan, as noted at 5.04 and 5.05 above, as H2 is considered non-compliant and thus “silent” for the purposes of interpreting this paragraph. It does note, however, that adverse impacts need to be taken into account, and therefore does not present a carte-blanche to approving residential development within the countryside.

- 5.16 Paragraph 17 (11th and 12th bullet points only) of the NPPF are relevant, and state that *“within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking.*
- *actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and*
 - *take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.”*
- 5.17 Paragraph 35 encourages developments that *“protect and exploit opportunities for the use of sustainable transport modes.”* It states that development should be located and designed to give priority to pedestrians, create safe and secure layouts for pedestrian and cycle movements, and consider the needs of people with disabilities by all modes of transport.
- 5.18 Paragraph 50 states that LPAs should deliver a wide choice of high quality homes and create sustainable communities by taking demographic trends into consideration, provide housing reflecting local demand, and securing affordable housing provision. Further to this para. 54 states that LPAs should be responsive and reflexive to local affordable and rural housing needs.
- 5.19 Paragraph 55 of the NPPF is crucial in the consideration of applications such as this, and is worth reproducing in its entirety (my emphasis in bold):

*“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.”*

6.0 LOCAL REPRESENTATIONS

- 6.01 None received.

7.0 CONSULTATIONS

- 7.01 Iwade Parish Council object to the application, commenting:

“The impact on nature conservation (the SSSI and Ramsar sites are nearby) e.g., local sites (biodiversity and geodiversity); local landscape character; and local or national biodiversity priority habitats and species.

The development will be outside the built up boundary of the village.

There is no requirement for low cost housing in the village. Recent developments in Iwade have had low cost housing reduced to 10%, in the past it was 30% which supports this statement.

It is disconcerting to note that the site has already been cleared presumably in readiness for this development.”

7.02 Natural England note that the site lies close to the SSSI / SPA / Ramsar, and that a Habitat Regulations Assessment (HRA) should be carried out to determine whether or not a financial contribution to their upkeep is required.

7.03 Historic England has no objection.

7.04 Kent County Council Highways & Transportation have no objection.

7.05 The Lower Medway Internal Drainage Board has no objection.

7.06 The Council’s Environmental Health Manager notes that *“there is evidence of potentially contaminative activities in the area,”* and requests that the standard land contamination conditions be attached to any permission. They also suggest that a noise survey should be carried out to determine levels of background noise from the industrial estate, which will inform the need for mitigation measures on site.

7.07 The Council’s Strategic Housing & Health Manager commented:

“Mobile homes as affordable housing are not normally considered suitable. As far as I am aware there are no Housing Associations operating in Swale that currently manage mobile homes and I would think it highly unlikely that they would want to take such units or fund the purchase of these homes particularly in this location.”

8.0 BACKGROUND PAPERS AND PLANS

8.01 The application is accompanied by a full suite of supporting documents, available to view on file or via the public access system.

9.0 APPRAISAL

Principle of Development

9.01 The principle of development in this instance is complicated by virtue of the Council’s *current* lack of an identified five-year housing supply, but this is clarified through a recent (17 March 2016) court judgement: The Royal Court of Justice ruling in relation to i) Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, and ii) Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government

- 9.02 At para. 32 the Court states that “relevant policies for the supply of housing” means all policies that would affect the outcome of an application for new housing development:

*“A “relevant” policy here is simply a policy relevant to the application for planning permission before the decision-maker – **relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority’s area or because it bears upon the principle of the site in question being developed for housing.**” [My emphasis.]*

- 9.03 This is expanded in para. 33:

“Our interpretation...recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty ... policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development.”

- 9.04 Para. 35 clarifies concisely:

“If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not “up-to-date” under paragraph 49 of the NPPF – and “out-of-date” under paragraph 14.”

- 9.05 Where policies that restrict housing development are out of date, the NPPF’s overall presumption in favour of sustainable development, and providing new housing to meet the designated five-year supply target (currently 776 dwellings per annum) is considered to prevail. This opens up otherwise unacceptable sites to consideration for new housing development, e.g. sites outside of built up areas, in order to meet that target.

- 9.06 However, para 24 states that *“Lord Reed ... emphasized, however (in paragraph 19), that statements of policy “should not be construed as if they were statutory or contractual provisions”. He also said (in the same paragraph) that “**many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment**”, and that “[such] matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse...” ... It has been accepted in this court, and is not in dispute in these appeals, that the same principles apply also to the interpretation of national policy and guidance, including policies in the NPPF.”* [My emphasis.]

- 9.07 This affords the Council opportunity to consider the weight to be afforded to national policy in terms of its affect upon local policy on a case-by-case basis, and with reference to the particular circumstances of each application.

- 9.08 Furthermore the judgement notes at para. 42 that *“it is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense.”*

- 9.09 Crucial to the consideration of applications such as this is para. 43 of that judgement:

“When determining an application for planning permission for housing development the decision-maker will have to consider, in the usual way, whether or not the proposal accords with the relevant provisions of the development plan. If it does, the question will be whether other material considerations, including relevant policies in the NPPF, indicate that planning permission should not be granted. If the proposal does not accord with the relevant provisions of the plan, it will be necessary to consider whether other material considerations, including relevant policies in the NPPF, nevertheless indicate that planning permission should be granted.”

- 9.10 Consequently, my understanding of the ruling is that whilst a failure to demonstrate an up-to-date five-year housing supply opens up consideration of sites that would be otherwise unacceptable under **any** policies that restrict the supply of housing (rural restraint policies, for example), there is still a duty imposed upon officers to consider **all other relevant policies** within both local guidance and the NPPF when assessing the suitability of any sites that come forward as part of an application. The weight that is afforded to those individual policies needs to be balanced against the lack of a demonstrable five-year supply, but does not negate the validity or the intention of those policies in themselves.
- 9.11 Therefore the acceptability of the principle of development can't be established from the outset, and a conclusion needs to be arrived at following consideration of the individual matters as set out below, and the associated policies.

Housing supply

- 9.12 The Council cannot at the time of writing, demonstrate an up-to-date five-year supply of housing. The Local Plan Inspector has set us a target to provide 776 dpa (dwellings per annum) over the emerging plan period to 2031, and the policy department are currently examining additional allocations to meet this target.
- 9.13 Some of the outstanding need is being met by windfall sites, such as this, and in this (very specific) regard the application can be seen as acceptable in principle. However, it makes a very limited contribution to the five-year supply (a total of three units), and this limited gain needs to be weighed against a number of negative features of the proposal, as explored below.

Rural protection

- 9.14 The site lies outside of any built up area boundary and is thus considered to lie within the countryside of the Borough. Policy E6 of the adopted SBLP 2008 and ST3 of the emerging local plan aim to restrict the provision of housing unless for very specific circumstances – one of which is the provision of affordable housing to meet an identified rural need, with the support of the Parish Council.
- 9.15 Members will note, at section 7 above, that the application is not supported by either the Parish Council or the Council's housing team, and there is no identified need for affordable housing within Iwade (and, as noted by the Parish Council, affordable housing provision on new developments within the village has steadily reduced in recent years).

- 9.16 There is no suggestion or evidence put forward to suggest that the development would provide accommodation for gypsies, travellers, or rural workers, or fall within any of the recognised other rural housing exceptions. The proposal therefore amounts to unjustified and unnecessary housing within the countryside, with consequent harm to the character and amenity of the rural landscape in a manner contrary to established policies.
- 9.17 Caravans and mobile homes are, by their very nature and design, alien and intrusive features within the countryside in my opinion. I recognise the need for them to be permitted in some instances, such as for gypsy and traveller accommodation, but to do so without any justification here would, in my opinion cause harm to the character and appearance of the countryside. I note that the site has been, for many years, kept in an untidy state, but this could be addressed by means other than permitting new dwellings in the countryside and is not in any way a justifiable reason for approving this application. Given the presence of the adjacent gypsy / traveller sites and the small caravan site nearby, however, I do not consider them to be so harmful as to justify a reason for refusal in this instance.

Sustainable development

- 9.18 The site is located approximately 1km from the Iwade village centre. The Council normally considers anything within 2km of shops, services and public transport links to represent sustainable development. However in this instance the site is 1km away on an unlit, 60mph road, with no pedestrian or public transport links. These are very similar circumstances to the gypsy and traveller sites at Greyhound Road, Minster, which officers and Members have continually resisted.
- 9.19 Residents of the site would therefore be heavily reliant upon private vehicles for transport. Furthermore I consider the location to be unsuitable for vulnerable or elderly people who would be attracted to low-cost affordable housing of this type, as they would have no access to services. In this regard I consider the site location to be unsustainable and unsuitable, and contrary to established local and national policy

Residential amenity

- 9.20 I have no serious concerns in regard to the potential impact upon the existing neighbouring residents. The development would be well-laid out and spacious, and would be unlikely to give rise to any serious issues of residential amenity in this regard.
- 9.21 However, the site lies immediately adjacent to an existing industrial estate and close to Iwade speedway, where there is the potential for noise and disturbance. The industrial estate has planning permission for B1 light industrial uses which, by their nature, are not harmful to residential amenity. However the surrounding environment is heavily characterised by external storage, parked vehicles, and general industrial type activity. This is not, in my opinion, a good location for housing by virtue of outlook, noise, and general disturbance. It is particularly not a good location for vulnerable people that may be attracted to low-cost, affordable housing, in my opinion – were the site within a similar location in the built up area, immediately adjacent to Eurolink, for example, I would reach the same conclusion.
- 9.22 I therefore consider that the site is unsuitable for residential development and the application is contrary to local and national policy.

Other considerations

- 9.23 I have no serious concerns in regardsto parking, landscaping, or the provision of amenity space within the site.

Housing supply and the impact on policy

- 9.24 As noted above one has to consider the otherwise unacceptable nature of this development against the need for the Council to demonstrate a five-year housing supply. And, as at 9.09, it is for officers to determine whether or not the policies in the development plan (adopted and emerging Local Plans, the NPPF and the NPPG) outweigh the need for more housing.

- 9.25 Paragraphs 14 and 49 of the NPPF state that, in a nutshell, where the Council can't demonstrate a five-year supply the Council should "approve development proposals that accord with the development plan without delay," and where the development plan is absent (as ours is because of a lack of five-year supply), the Council should be granting permission.

- 9.26 However, paragraph 14 caveats this position by stating that permission should be granted **unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the NPPF, or specific policies in the NPPF indicate development should be restricted.**

- 9.27 As discussed above I consider the proposal to have several significant drawbacks. Section 5 above also sets out quite clearly that paras. 17, 35, 50, 54, and 55 of the NPPF advise against granting permission here, supported by policies E1, E6, H2 and RC3 of the adopted Local Plan, and policies ST1, ST3, ST5, CP2, CP3, DM8, DM9, and DM14 of the emerging Local Plan.

- 9.28 With regard to the harm caused by this proposal I consider that the above policies outweigh the need to meet the five-year supply target, and consider that refusing planning permission in this instance would be justifiable and correct in light of current policy and legal circumstances.

10.0 CONCLUSION

- 10.01 This application seeks planning permission for affordable housing within the countryside. No evidence has been submitted for such housing and the application is not supported by either the Parish Council or the Council's affordable housing team. The site is within an unsustainable location, and the caravans themselves would be harmful to the character and appearance of the countryside.

- 10.02 Taking the above into account I recommend that planning permission should be refused, and that the policies to support such a refusal, in this instance, outweigh the need for the Council to demonstrate a five-year housing supply.

11.0 RECOMMENDATION –REFUSE for the following reasons:

- (1) The site lies within the countryside of the Borough where residential development is resisted in principle. The site is remote from any shops, services, or public transport links. Future residents would therefore be entirely reliant upon private vehicles, and this is not considered to represent sustainable development. Furthermore the location of the site immediately adjacent to an industrial estate would give rise to a

poor level of residential amenity for future residents. The proposal is therefore contrary to Policies E1, E6, H2 and RC3 of the adopted Swale Borough Local Plan 2008; Policies ST1, ST3, ST5, CP2, CP3, DM8, DM9 and DM14 of the emerging Local Plan 'Bearing Fruits 2031;' and paragraphs 14, 17 (11th and 12th bullet points only), 35, 50, 54 and 55 of the National Planning Policy Framework.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance the application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application. It is noted that the applicant/agent did not engage in any formal pre-application discussions.

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

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

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3.2 REFERENCE NO - 16/500546/FULL and 16/500547/LBC		
APPLICATION PROPOSAL		
16/500546/FULL Planning application for the erection of a single storey underground dwelling with a flat grass roof at ground level.		
16/500547/LBC Listed building consent for partial demolition of grade II* listed boundary wall.		
ADDRESS Land Adjacent To 77 Bull Lane Newington Kent ME9 7LY		
RECOMMENDATION Refusal of planning permission and listed building consent		
SUMMARY OF REASONS FOR REFUSAL		
16/500546/FULL Planning application: Residential development within the historic curtilage of the grade II* listed Newington Manor would harm the wooded nature of the site, its amenity, visual and historic value. The character of the woodland would become more open and domestic, the integrity of the burr brick wall would be compromised and the enclosure and separation afforded to the Manor by the trees would be reduced. This would harm the setting of the listed building, boundary wall and the conservation area. The proposed development would erode the wooded character of the conservation area and lead to post development pressure on trees, harmful to visual amenity and the streetscene.		
16/500547/LBC Listed building consent: The partial demolition of the grade II* listed boundary wall is considered to be unjustified given the unacceptable nature of the application for planning permission.		
REASON FOR REFERRAL TO COMMITTEE		
Councillor Lewin requests that the application be determined by planning committee so Members can judge whether this innovative development is justified next to an historic building.		
WARD Hartlip, Newington & Upchurch	PARISH/TOWN Newington	COUNCIL APPLICANT Mr Marcus Daly AGENT Mrs Linda Clarke Smith
DECISION DUE DATE 2/06/16	PUBLICITY EXPIRY DATE 25/3/16	OFFICER SITE VISIT DATE 3/3/16
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
App No	Proposal	Decision
-SW/85/1162	OUTLINE APPLICATION FOR TWO DETACHED HOUSES AND GARAGES- refused due to the impact on the setting of the listed building; the loss of trees.	Refused.
-SW/89/0388	OUTLINE APPLICATION FOR 2 NUMBER DETACHED DWELLINGS AND GARAGES AND PROVISION OF PUBLIC FOOTPATH. Refused due to the impact on the setting of the listed building; the loss of trees; and highway safety and convenience.	Refused.
SW/89/1011	OUTLINE APPLICATION FOR 2 NUMBER DETACHED DWELLINGS AND GARAGES AND PROVISION OF PUBLIC FOOTPATH. Refused due to the impact on the setting of the listed building; the loss of trees; and highway safety and convenience by way of unsatisfactory on site turning, lack of visibility splays and insufficient garage access.	Refused.
15/504504/FULL	Erection of a single storey detached dwelling. Reasons for refusal; (1) The proposal would introduce residential development within the historic curtilage of the grade II* listed Newington	Refused.

	<p>Manor which would harm the wooded nature of the site, its amenity, visual and historic value. The character of the woodland would become more open and domestic, the integrity of the burr brick wall would be compromised and the enclosure and separation afforded to the Manor by the trees would be reduced. Collectively these result in a failure to preserve the setting of the listed building, harm to the integrity of the curtilage listed boundary wall, and a failure to preserve or enhance the character or appearance of the conservation area, contrary to the statutory tests set out within sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), paragraphs 131-134 of the National Planning Policy Framework, and Policies E1, E14 and E15 of the Swale Borough Local Plan 2008.</p> <p>(2) The proposal, by virtue of the construction of the new vehicle access and location of the dwelling, would cause considerable erosion to the wooded character of the conservation area, particularly when viewed from Bull Lane. This erosion and the potential for post development pressures to prune/fell the nearby trees because of shading and fears of overshadowing the new dwelling would result in unacceptable harm to the visual amenities of the area and the character and appearance of the streetscene contrary to Policies E1 and E10 of the Swale Borough Local Plan 2008.</p>	
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These are separate applications and each should be considered on its own merits. Both are dealt with in a combined report because of the nature of the proposals.

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The site fronts onto Bull Lane and once formed part of the gardens to Newington Manor to the east. Newington Manor and its associated boundary wall, which forms the boundary of the application site with Bull Lane, are grade II* listed buildings and are also located within the Newington Manor conservation area. The land within the application site to the east of the listed boundary wall sits around 2m higher than Bull Lane and has a dense covering of mature trees which create a sylvan quality to the site when viewed from Bull Lane. There is a public right of way that runs to the south west boundary of the application site. The site is within the countryside and a strategic gap as defined by the proposals map of the Swale Borough Local Plan 2008.

2.0 PROPOSAL

2.01 The planning application is identical to that refused under 15/504504/FULL noted above. An application for listed building consent has been made for the enabling works to the wall. The previously refused planning application was not accompanied by such an application for listed building consent. The proposal entails the construction of a dwelling that would be dug into the ground so that the flat roof would be level with the surrounding existing ground levels. The perceived design rationale is to minimise the impact on the historic setting of the grade II* listed building. The three bedroom dwelling would be roughly rectangular in shape and would measure 10m deep, 16m wide and 3m to flat roof height. The elevations would be clad in larch timber, and the roof would be grassed and contain plants. The north east elevation would abut the surrounding land with the other three elevations visible. The land

would be excavated on three sides of the dwelling to provide a rear patio area, vehicle turning and car parking area and driveway leading to Bull Lane. A ramp would provide access from dwelling level to the upper ground level which is to be used as garden land.

- 2.02 The drawings indicate a 2m high gate fronting Bull Lane. The existing listed wall runs parallel to Bull Lane whereas the proposed site plan shows the wall set back to incorporate vehicle visibility splays. This section of the grade II* listed boundary wall is to be demolished and a new wall constructed further into the site to accommodate this.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.05	0.05	0
Approximate Ridge Height (m)	0	3	+3
Approximate Depth (m)	0	10	+10
Approximate Width (m)	0	16	+16
No. of Storeys	0	1	+1
Parking Spaces	0	2	+2
No. of Residential Units	0	1	+1

4.0 PLANNING CONSTRAINTS

- 4.01 The site is located within the countryside and strategic gap as defined by the Proposals Map of the Swale Borough Local Plan 2008. The proposal is within the setting of a grade II* listed building and the proposal entails demolition of part of the similarly listed boundary wall. The site is within the Newington Manor conservation area and the site may have archaeological potential. There is a public right of way to the south west of the site.

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The following statutory tests set out within the Planning (Listed Buildings and Conservation Areas) Act 1990 state;

In relation to planning applications;

“66. General duty as respects listed buildings in exercise of planning functions..

(1)In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall 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.”

“72. General duty as respects conservation areas in exercise of planning functions..

(1)In the exercise, with respect to any buildings or other land in a conservation area, of any [functions under or by virtue of] any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

In relation to listed building consent applications;

“16 Decision on application.....

(2)In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall 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.”

5.02 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG): re sustainable development, delivering a wide choice of quality homes, requiring good design, and conserving and enhancing the natural and historic environments. Relevant sections regarding heritage are quoted below;

“128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.”

“131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

132. 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.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.”

5.03 Development Plan: Policies SP1, SP2, SP4, TG1, E1, E6, E7, E10, E12, E14, E15, E16, E19, H2 and T3 of the Swale Borough Local Plan 2008 are relevant together with those within the emerging local plan as far as relevant.

5.04 Supplementary Planning Guidance: Listed Buildings; Conservation Areas.

6.0 LOCAL REPRESENTATIONS

- 6.01 One letter of support has been received from a local resident stating it is the very best solution to prevent above ground dwellings being built which would overlook neighbouring gardens. It would also help to maintain the trees which are a worry and prevent danger of electricity lines being tangled in the trees.
- 6.02 One of the owners of the site wrote a letter stating that over the last few years youths have used the site as an evening meeting place, playing loud music and disturbing neighbours. They vandalised the old wall to get sofas in, and have littered the site. A warden contacted the owner because the wall had become unstable along the public footpath. Paint has been put on the old wall and stones thrown at the windows of Newington Manor. Crime number XY/21458/13 relates. The only way to stop this continuing would be to build on the site.
- 6.03 Newington Parish Council comments; “Whilst Newington Parish Council regrets the loss of woodland the Parish Council recognises that the planned bungalow is designed to minimise harm to the environment and is as unobtrusive as possible.”

7.0 CONSULTATIONS

- 7.01 The Council’s Tree Consultant has not commented on this application but did provide comments on the previously refused identical proposal . He stated;
- “From my visual observations of the trees growing on the area to be developed the submitted arb report by Arbtech appears to correctly identify the principle trees that will be affected by the construction of the new dwelling and access. In general a number of the trees growing on the site appeared to be in a declining condition with die-back and some displaying split hanging branches. Whilst in principle I accept that some of these trees may well need to be removed in the interests of future safety the construction of the new access and location of the dwelling would in my opinion cause a considerable erosion to the sylvan character of the conservation area, particularly when viewed along Bull Lane. Therefore, because of this erosion and the potential for post development pressures to prune/fell the nearby trees (as shown for retention on the Arb report) because of shading and fears of overshadowing the new dwelling I am unable to support this application.”
- 7.02 The Ancient Monument Society comments “The Heritage Statement is very sketchy and we question whether it offers adequate provision to satisfy the requirements of Paragraph 128 of the National Planning Policy Framework (NPPF). Would it be possible to see photographs of the site the applicant wishes to build on, as well as its context?”
- 7.03 KCC Highways and Transportation commented that the proposal is the same as the last application and raises no objection subject to visibility splays of 2m x43m being demonstrated at the site and it is noted these are achievable owing to the geometry of the site; recommended conditions include securing parking spaces; bound surface for first 5m of access; gates to open inwards and set 6m into the site; maintenance of visibility splays with no obstruction above 0.9m; and retention of vehicle loading and turning space.
- 7.04 KCC Archaeology considers there to be strong archaeological potential on the site and recommends a condition securing a programme of archaeological works.
- 7.05 Whilst this application was not accompanied by an ecological appraisal, the previously refused application was and the comments on KCC Ecology on the

previous application remain relevant. KCC Ecology has reviewed the previously submitted phase 1 ecological appraisal and considers that sufficient information has been submitted to determine the application. The phase 1 identifies 2 trees with bat roost potential, TN5 and 6, with TN6 retained and TN5 to be removed. The precautionary mitigation detailed within the ecological appraisal must be implemented when TN5 is removed. External lighting should be designed to minimise the impact on bats. Bat boxes should be designed into the proposed vegetated buffer around the development. The site is largely unsuitable for reptiles due to the dense scrub but their presence cannot be ruled out therefore the site should be cleared using the precautionary mitigation detailed within the report with site clearance only taking place in the active reptile season (April to September). Refugia for reptiles should be included within the vegetated buffer to enhance the site for reptiles. The site has nesting bird potential and should be cleared outside their breeding season (March-August). The vegetated buffer around the site should be managed to benefit biodiversity with a simple management plan condition attached.

- 7.06 Historic England does not wish to comment in detail but observes that KCC Archaeology should be consulted, and urges the Council to determine the application in accordance with policy and based on the Council's specialist conservation advice.
- 7.07 The following bodies have not commented specifically on these applications but they did comment on the previous identical application for planning permission and so remain valid considerations;

Natural England (NE) raises no objection in relation to the impact on designated nature conservation sites, noting the site is 2.9km south of Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar site. The site is designated at a national level as a Site of Special Scientific Interest. NE advises that the proposal is not necessary for the management of a European site and that subject to a financial contribution towards strategic mitigation the proposal can be screened out from the need for any further assessment. Mitigation will need to be in place prior to occupation of the dwelling.

Southern Water recommends an informative relating to an application to connect to the public sewerage system. As there are no public surface water sewers in the area, an alternative must be found that doesn't involve the public foul sewer. The application refers to SUDS which are not adoptable and should be properly designed and maintained in perpetuity. A SUDS details condition is recommended.

The Lower Medway Internal Drainage Board confirms the proposal does not affect its interests.

UK Power Networks raises no objection.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The application includes a physical model, design and access statement, and heritage impact assessment.

9.0 APPRAISAL

- 9.01 The site is located in the countryside and strategic gap where residential development is usually resisted in principle. However, this site relates relatively well to the built up area boundary of Newington and would help to address the Council's recognised 5 year housing land supply shortfall (albeit in a very small way) with little erosion of the

open character of the strategic gap due to the design. As the Council cannot demonstrate a 5 year supply of housing land its policies relating to the supply of housing are considered to be out of date therefore only limited weight can be attached to them. Notwithstanding the above, whilst normally the principle of development may have been considered acceptable by officers, the overriding considerations in this case are the statutory tests set out above with regard to the adjacent grade II* listed building, the listed wall to be partially demolished as part of this proposal, and the conservation area.

- 9.02 The submitted drawings and heritage statement are of poor quality. The latter incorrectly states that the building is grade II listed when in fact it is grade II* and it does not consider any of the relevant statutory or policy tests.
- 9.03 The significance of the site in relation to the setting of the grade II* listed building or to the character of the conservation area stems from;
- The wooded nature of the site which has considerable amenity, visual and biodiversity value in its semi urban surroundings. The woodland creates a dramatic setting to the Manor and provides an effective visual barrier between it and the suburban development to the north and west.
 - Its historic function as the garden to Newington Manor.
- 9.04 The heritage assessment takes the view that removal of the trees restores the site to its appearance when it was a kitchen garden, a view which would have some validity if the significant trees were not to be replaced by a house. My assessment is that any theoretical conservation gain resulting from the removal of trees from the former kitchen garden is more than lost by the creation of a house in the garden. The impact of the house on the character of the former kitchen garden would disregard any reference to its historic function and its archaeology interest would be substantially lost. The site which still has the appearance of belonging to the Manor would become separated from it and assume its own residential identity.
- 9.05 In my opinion, residential development within the historic curtilage of the Manor does not preserve or enhance its setting, or the character or appearance of the conservation area. The wooded nature of the site, its amenity and visual value, and its historic value would be harmed by development. The character of the woodland would become more open and domestic, the integrity of the burr brick wall would be compromised and the enclosure and separation afforded to the Manor by the trees would be reduced. Collectively these changes would result in harm to the character and appearance of the conservation area and the setting of the listed building.
- 9.06 Paragraph 134 of the NPPF requires that where a development will lead to less than substantial harm to the significance of a designated heritage asset, as is the case here, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The application makes no case for there being any public benefit and I cannot see that there is any, save for the very limited contribution to housing supply within the Borough (see my comments below on the issue of prevention of anti-social behaviour). I give this very limited weight, bearing in mind the very small contribution the scheme would make. The optimum viable use is as woodland or garden and this appears not to be under any threat. I recommend that permission be refused on the grounds of failing to preserve the character or appearance of the conservation area, the setting of the listed building and the integrity of the curtilage listed boundary wall.

- 9.07 The impact of the proposal on residential amenity would be very minimal and acceptable because of the design and relatively remote position from neighbouring properties.
- 9.08 The design, in itself, is relatively unusual and modern in appearance. Despite the poor quality of the submitted drawings, it is possible to see that the aim of the design is to minimise the impact on the surrounding area but unfortunately is unsuccessful in this regard as stated above and below. Whilst this design may have been acceptable on another site it does not override my wider concerns about the proposal.
- 9.09 The loss of the trees noted within the arboricultural assessment would erode the wooded character of the site and the proposal would potentially result in post development pressures to prune/fell the nearby trees because of shading and fears of overshadowing the new dwelling. This would result in unacceptable harm to the visual amenities of the area and the character and appearance of the streetscene. It is recommended that permission is refused for this reason.
- 9.10 The ecological impacts of the proposal could have been dealt with by condition in accordance with the comments of KCC Ecology had the wider proposal been acceptable. The impact on protected/notable species is acceptable, as is the impact on the statutory nature conservation sites to the north as set out in the habitat regulations assessment below.
- 9.11 There would be no impact on the public right of way to the south of the site.
- 9.12 The impact on highway safety and convenience is acceptable in my opinion as clarified by KCC Highways and Transportation and could have been dealt with by condition had the wider scheme been acceptable.
- 9.13 KCC Archaeology recommends a programme of archaeological works which would have been conditioned had the proposal been acceptable.
- 9.14 I note the heritage impact assessment considers there may be a need to erect security fences and or cameras to address ongoing issues with trespass and antisocial behaviour on the site and that these measures would be unnecessary if permission was granted so that the site was occupied by residents. I note the comments of the owner regarding the security/antisocial behaviour on site. It also considers the potential security measures far more detrimental to the setting of the Manor than the proposed dwelling. I do not agree with this view or consider that the requirement for security outweighs the harm identified. Any means of enclosure within the site would require planning permission as its falls within the curtilage of a listed building and would need to be appropriate in design terms and heritage impact considerations. In addition, I am not persuaded that the passive security provided by this dwelling would have any meaningful impact on any antisocial behaviour taking place within the grounds of Newington Manor itself. The site is in separate ownership, and although close enough to have an impact on the main listed building at the site, it is unlikely that the occupiers of the proposed dwelling would be able to monitor the wider site. In any case, it is notable that alleged antisocial behaviour is taking place anyway, despite the presence of the existing dwellings on Bull Lane and Callaways Lane. Given this, I do not attach significant weight to this as a benefit derived from the proposed scheme. Notwithstanding the above, the erection of a dwelling here is not in my view a proportionate response to trespass or antisocial behaviour.
- 9.15 The listed building consent proposal to demolish part of a grade II* listed wall is considered to be unjustified because, as the NPPF states, as heritage assets are

irreplaceable, any harm or loss should require clear and convincing justification. Given that the planning application is considered unacceptable, it follows that the enabling demolition of a listed building is unjustified and consent should be refused in my opinion.

10.0 CONCLUSION

10.01 The planning application does not represent sustainable development due to the harm to designated heritage assets and the wooded character of the area. The listed building consent application is unjustified because the planning application is unacceptable.

11.0 RECOMMENDATION –REFUSE for the following reasons:

Reasons for refusal for planning application 16/500546/FULL;

- (1) The proposal would introduce residential development within the historic curtilage of the grade II* listed Newington Manor which would harm the wooded nature of the site, its amenity, visual and historic value. The character of the woodland would become more open and domestic, the integrity of the burr brick wall would be compromised and the enclosure and separation afforded to the Manor by the trees would be reduced. Collectively these result in a failure to preserve the setting of the listed building, harm to the integrity of the curtilage listed boundary wall, and a failure to preserve or enhance the character or appearance of the conservation area, contrary to the statutory tests set out within sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), paragraphs 131-134 of the National Planning Policy Framework, and Policies E1, E14 and E15 of the Swale Borough Local Plan 2008.
- (2) The proposal, by virtue of the construction of the new vehicle access and location of the dwelling, would cause considerable erosion to the wooded character of the conservation area, particularly when viewed from Bull Lane. This erosion and the potential for post development pressures to prune/fell the nearby trees because of shading and fears of overshadowing the new dwelling would result in unacceptable harm to the visual amenities of the area and the character and appearance of the streetscene contrary to Policies E1 and E10 of the Swale Borough Local Plan 2008.

Reason for refusal for listed building consent application 16/5000547/LBC;

- (1) The partial demolition of the grade II* listed boundary wall is considered to be unjustified given the unacceptable nature of the application for planning permission, contrary to the statutory tests set out within section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), paragraphs 132-134 of the National Planning Policy Framework, and Policy E14 of the Swale Borough Local Plan 2008.

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 there application.

In this instance:

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

Habitat Regulations Assessment Screening

This HRA has been undertaken with the phase 1 ecological appraisal submitted by the applicant

The application site is located approximately 2.9km south of Medway Estuary and Marshes Special Protection Area (SPA) 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 of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, 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 single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

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

Site visit made on 11 April 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 19 April 2016

Appeal Ref: APP/V2255/D/16/3141714

20 Amber Rise, Sittingbourne, Kent ME10 5JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Sara Smith against the decision of Swale Borough Council.
 - The application Ref 15/502276/FULL, dated 13 March 2015, was refused by notice dated 28 October 2015.
 - The development proposed is to move the existing fence to the boundary line of the property, whilst keeping a small border for planting an assortment of climbing plants.
-

Decision

1. The appeal is allowed and permission is granted to move the existing fence to the boundary line of the property, whilst keeping a small border for planting an assortment of climbing plants at 20 Amber Rise, Sittingbourne, Kent ME10 5JE, in accordance with the terms of the application, Ref 15/502276/FULL, dated 13 March 2015, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: IDB/10/070915/1, IDB/10/160915/1B and Land Registry Index map plan 2103025002.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the street scene.

Reasons

3. This appeal concerns the pedestrian route which links Amber Rise with Lorimar Court, two pleasant residential roads which form part of a large modern housing estate. The route, which runs between Nos 18 and 20 Amber Rise, is not particularly long, perhaps about 25 m, has a path about 2–3 m wide and runs between two borders planted with shrubs and bushes.
4. The proposal is for the close boarded fence on one side of the path, alongside No 20, to be relocated to within about 0.2 m of the path along its length, about 1 m closer than at present. The existing shrub border would be lost, but a narrow border of plants, climbers and shrubs would be planted alongside the repositioned fence.

Appeal Decision APP/V2255/D/16/3141714

5. The existing shrub border has become overgrown and a litter trap, as a result of which part has recently been cut back. Although potentially a pleasant landscaped border within the housing estate, its wider impact is very limited as it cannot be clearly seen from the roads at either end but only to pedestrians actually walking along the path. The border alongside No 18 is slightly more visible from the roads at each end due to the alignment of the path.
6. Relocating the fence as proposed would tidy up the area whilst still enabling some limited landscaping to be provided. There would be minimal impact on the overall appearance of the estate, which would retain its general open and landscaped character. Furthermore, due to the retained landscaping alongside No 18 and the relative width of the path in relation to its modest length, it would not feel unduly enclosed or oppressive when used by pedestrians.
7. For these reasons the proposal would not cause any significant harm to the character and appearance of the street scene and would comply with Policies E1 and E19 of the Swale Borough Local Plan 2008. These require development to reflect the characteristics of the site and locality and to be appropriate to its context and surroundings.
8. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR



Appeal Decision

Site visit made on 11 April 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 19 April 2016

Appeal Ref: APP/V2255/D/16/3143711

1 Connaught Road, Sittingbourne, Kent ME10 1HY

- 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 Laurence Lock against the decision of Swale Borough Council.
 - The application Ref 14/504797/FULL, dated 15 October 2014, was refused by notice dated 16 November 2015.
 - The development proposed is replacement of existing garage with new workshop above.
-

Decision

1. The appeal is allowed and permission is granted for replacement of existing garage with new workshop above at 1 Connaught Road, Sittingbourne, Kent ME10 1HY, in accordance with the terms of the application, Ref 14/504797/FULL, dated 15 October 2014, subject to the attached schedule of conditions.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the living conditions of the occupiers of No 3 Connaught Road and No 62 Ufton Lane in relation to outlook, light and privacy.

Reasons

Character and appearance

3. No 1 Connaught Road is an end terrace property on the corner of Ufton Lane, with its rear garden having frontage onto the side road. At the end of the rear garden, which is screened by a close boarded fence, is a flat roof single-storey garage which belongs to No 1. Next to this is a single parking space, a narrow pathway and then No 62 Ufton Lane, a detached house which is set well back from the road.
4. The proposal is to rebuild the garage at a slightly lower level flush with the footway together with a workshop above. The workshop would be a simple structure with a dual pitched roof, gable end to the road, the whole building being clad with stained boarding and an aluminium sheet roof. It would have

Appeal Decision APP/V2255/D/16/3143711

two small velux rooflights on the two roof slopes and would be accessed from the rear garden by a short flight of stairs.

5. The existing frontage along Ufton Lane between the side elevation of No 1 and No 62 is utilitarian in nature, comprising a low rendered wall, tall fencing, flat roof garage and parking space. This allows views of the rear of Nos 1-5 Connaught Road and properties in Unity Street which are not particularly attractive. The proposed garage/workshop would be more pleasing than the existing flat roof garage in this location and would provide the benefit of a modest feature building within the gap. Whilst it would be close behind the footway it would be a relatively small building - only about 3.2 m wide, about 3.3 m to the eaves with the gable end rising to about 5 m. In views along Ufton Lane it would either be seen against the back of No 1 or against the flank wall of the terraced house next to No 62.
6. For these reasons the proposal would not cause significant harm to the character and appearance of the area. It would therefore comply with Policies E1, E19 and E24 of the Swale Borough Local Plan 2008 (the Local Plan) which require development to reflect the characteristics of the site and locality, to be appropriate to its context in respect of scale, height and massing and maintain or enhance the street scene.

Living conditions

7. The garage/workshop would back onto the side of the rear garden of No 3, currently laid to grass. Whilst it would project above the close boarded boundary fence it would only be about 3.2 m wide, less than a third of the length of the garden, and the apparent height of the building would be reduced by about 1 m due to a significant difference in ground levels. Whilst clearly visible from No 3 the building would not be unduly overbearing given its relatively small size and the openness of the remainder of the boundary. For the same reason the loss of daylight and sunlight in the garden would be minimal and would not significantly affect its enjoyment.
8. The velux rooflights would only be about 1.5 m above floor level inside the workshop which could compromise privacy in the garden. However, a condition could be imposed to ensure these are obscure glazed and non-opening. In order to prevent undue noise and disturbance in the garden a condition could also be imposed to restrict the use of the workshop to domestic ancillary purposes only.
9. The garage/workshop building would be set well forward of No 62 Ufton Lane but also well to the side due to an intervening pathway and parking space. The building would therefore be sufficiently far away for it not to have any significant impact on the outlook from the front facing windows of No 62.
10. For these reasons the proposal would not cause significant harm to the living conditions of the occupiers of No 3 Connaught Road or No 62 Ufton Lane in relation to outlook, light or privacy. It would therefore comply with Policies E1 and E24 of the Local Plan which require development to cause no demonstrable harm to, and to protect, residential amenity.
11. The Council suggested four conditions should the appeal be allowed and I have assessed these against the relevant tests. In addition to the standard implementation time limit it is necessary to define the plans which have been approved in the interests of certainty. A condition controlling the materials to

Appeal Decision APP/V2255/D/16/3143711

be used is necessary to ensure the satisfactory appearance of the building and a further condition to ensure the rooflights are obscure glazed/non-opening is necessary in order to protect the privacy of nearby occupiers. Conditions to restrict further buildings in the curtilage of No 1 without specific planning approval and to restrict the use of the garage/workshop to ancillary purposes only are necessary to protect the amenity of nearby occupiers. I do not however consider a condition limiting the use of the garage to the parking of vehicles is justified as there is no evidence that the existing garage is so restricted.

Conclusion

12. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2516/1A, 2516/2A, 2516/3.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 4) The velux rooflights on the north and south roof slopes of the building hereby permitted shall be obscure glazed and made non-opening prior to first occupation and retained as such at all times thereafter.
- 5) Upon completion, no further development permitted by Class 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 with or without modification) shall be carried out without the prior permission in writing of the Local Planning Authority.
- 6) The development hereby permitted shall only be used for purposes incidental or ancillary to the use of No.1 Connaught Road as a dwellinghouse and for no other purpose.

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Appeal Decision

Site visit made on 18 March 2016

by **Jonathan Fulcher**

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

Decision date: 28 April 2016

Appeal Ref: APP/TPO/V2255/4902

5 The Almshouses, South Road, Faversham, Kent ME13 7LU

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order (TPO).
- The appeal is made by Mrs Susan Bayford of Faversham Municipal Charities 2010 against Swale Borough Council.
- The application dated 27 May 2015 ref: 15/504141/TPO was refused by notice dated 14 September 2015.
- The proposed work is the pruning by pollarding of a lime tree.
- The relevant TPO is the Swale Borough Council Tree Preservation Order No 2 of 2015 which was confirmed on 16 September 2015.
- The site of the appeal tree is within the Faversham Conservation Area.

Decision

1. I dismiss the appeal.

Main Issues

2. In my view the main issues in this case are:-
 - i) The effect of the proposed pruning on biodiversity, local landscape quality and on amenity ;
 - ii) The effect of the proposed pruning on the Conservation Area; and
 - iii) Whether or not there are sufficient grounds for the works as proposed.

Reasons

Effects of proposed works on amenity

3. The appeal tree is a maturing lime tree of about 15m in height, standing in grassed open space in the curtilage of the Faversham Almshouses near the northeast fenced boundary along Napleton Road. The tree stands about 1.5m from the boundary which is marked by a low retaining wall that manages the level up from the footway, with a metal fence on the wall. The tree is locally prominent, clearly visible from South Road and Napleton Road. Although there are other trees on the South Road and Napleton Road boundaries of the area of open space at the east side of the Almshouses site, with a smaller tree close to the appeal tree, the appeal tree has amenity value as a single tree in its own right because of its size and proximity to streets. The appeal tree also has amenity as part of the local tree population and contributes to the character of the Conservation area by helping to give definition to the Almshouses site.

<http://www.planningportal.gov.uk/planninginspectorate>

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4. The proposed pruning, specified as pollarding, would remove the whole of the crown. Initially thereafter the tree would effectively be a stump of about 5m in height. If it recovered from the pruning by making regrowth, the crown would gradually redevelop, but very much reduced in size and with the form typical of pollards – a small round crown on a large trunk. At present the tree has an attractive form, with the height reduction to about 5m many years ago now giving a large open crown formed from several stems.
5. I find that the appeal tree has amenity value and that the proposed pruning would have a significant adverse effect on local landscape quality, on amenity and on the character of the Conservation Area.

Effects of proposed works on biodiversity

6. The Council's decision refers to the likelihood that the appeal tree contributes to biodiversity. Government guidance on matters such as biodiversity in the context of TPO tree work application is limited to references to compliance with appropriate legislation. With TPOs made in the interest of amenity, biodiversity is not normally a matter that carries significant weight in assessing TPO tree work applications. In the present case I have seen no evidence on matters of biodiversity and set that issue aside.

Grounds for the proposed works

7. The proposed pruning is predicated on the fact that the tree has been pruned by heavy crown reduction in the long past, with adverse consequences from the old pruning. These consequences include decay and suspect attachment of regrowth to the main trunk.
8. Decay is clear from the photographs submitted with the application and from my site visit. There are cavities; but I have not seen evidence to show that the cavities and decay are of such significance to the structural integrity of the tree as to warrant the proposed pruning.
9. I agree in principle that regrowth from old pruning points may be not as securely attached to the tree as naturally arising branches. In the case of the appeal tree, the pruning appears to have been tens of years ago, to judge by the size of the regrowth. The regrowth has the character of a 'normal' multi-stemmed crown. The regrowth does not appear to be branches ringing pockets of decay weakly attached to a thin cambium layer, but substantial branches well-attached by many years of growth.
10. The question raised in the undated unreferenced letter from Mr D J Brice in support of the application about when branches break off, not if, seems to me always to be a fundamental question in any safety assessment. An answer to the question may be approached on the basis of evidence, for example to show when a chronic situation tips over to an acute situation. In the case of the appeal tree I have not seen such evidence.
11. There is a reference in the D J Brice letter to a lime tree elsewhere in the grounds of the Almshouses that has been pollarded. A photograph with the letter shows this tree. This tree appears to be a 'genuine' pollard, which is a tree that has been cut back comparatively early in its life and managed by the removal of the regrowth on a regular cycle. This tree and the appeal tree are not similar in form or management. In my view the comparison between the two trees shows clearly the significant difference in amenity, with the appeal tree a substantially greater contributor to the local landscape and the character of the Conservation Area.

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12. The appeal submissions refer to dead wood and debris from the appeal tree, and suggest that arrangements have been made for dead, diseased or dying branches to be removed from the tree. There is also reference to further reporting on the condition of the tree. This is normal good management. I have seen no evidence that links dead wood, diseased or damaged branches to the past pruning, or to warrant the proposed reduction pruning on those grounds.

13. I am satisfied on the evidence I have seen that there are reasonable measures taken and proposed for managing the appeal tree. I conclude that the reasons for pruning are not supported by the evidence and do not outweigh the amenity value of the appeal tree and that I should dismiss this appeal.

Conclusions

14. The appeal lime tree makes a contribution to the local landscape and the proposed felling is likely to have an adverse effect on the local landscape quality, on amenity and on the character of the Conservation Area.

15. On the basis of the evidence I have seen I find that the reasons for pruning do not outweigh the amenity value of the tree and do not warrant the proposed works.

16. I conclude that the proposed pruning of the appeal lime tree is not warranted on the evidence and I therefore dismiss the appeal.

Jonathan Fulcher

Arboricultural Inspector

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Appeal Decision

Site visit made on 18 March 2016

by **Jonathan Fulcher**

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

Decision date: 03 May 2016

Appeal Ref: APP/TPO/V2255/4797
30 Preston Park, Faversham, Kent ME13 8LN

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order (TPO).
- The appeal is made by Mr Patrick Couchman against Swale Borough Council.
- The application dated 16 June 2015 ref: 15/504947/TPO was refused by notice dated 19 August 2015.
- The proposed work is the felling of a copper beech tree.
- The relevant TPO is the Swale Borough Council Tree Preservation Order No 6 of 2015 which was confirmed on 4 January 2016.

Decision

1. I dismiss the appeal.

Procedural matters

2. The decision ref: 15/504947/TPO was made in respect of TPO 6/1999. Subsequent to the appeal of 20 August 2015 Swale Borough Council was unable to provide evidence that the 1999 TPO had been confirmed. Consequently Swale Borough Council made a new TPO on 26 September 2015, which was confirmed on 4 January 2016.

Main Issues

3. In my view the main issues in this case are:-
 - i) The effect of the proposed felling on local landscape quality and on amenity; and
 - ii) Whether or not there are sufficient grounds for the works as proposed.

Reasons

Effects of proposed works on amenity

4. The appeal tree is a maturing copper beech of about 15m in height, appearing to be in normal health and condition for the species. The tree stands in the rear garden of 30 Preston Park towards the rear south end of the garden. The tree is visible from St Catherines Drive and Preston Park, and its slightly elevated position in respect of Preston Park gives it a degree of local prominence. This is reinforced by the absence of similar trees close by, which gives the appeal tree individual specimen amenity value. Foliage colour of copper beeches can polarise opinion, but the dark foliage also reinforces the prominence of the appeal tree. I am satisfied that the appeal tree has amenity value and is a significant local landscape feature. I find that the loss of the

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appeal tree would have an adverse effect on local landscape quality and on amenity.

Grounds for the proposed works

5. The shedding of bud scales, leaves and seeds as beech mast is normal for beech trees. It is understandable that these may be inconvenient but I have not seen evidence to show that they are at such an excessive and unreasonable level as to warrant the proposed felling.
6. The production of honeydew by aphids sucking sap from leaves is also a natural phenomenon, associated with several tree species including beech. Again this may be inconvenient, but I have not seen evidence to show that the production of honeydew and the problems associated with it are at such an excessive and unreasonable level as to warrant the proposed felling.
7. The appeal tree has dwellings to its west, north and east and gardens in all orientations. It is likely that the appeal tree will cast a shadow to the north in the middle of the day. It will also cast shade to the west, towards properties on the south side of St Catherines Drive, in the morning, and shade to the east, towards properties 26-30 Preston Park in the afternoon. The appeal tree is some 15m or so from the rear elevations of properties in Preston Park, with the crown spread towards the dwellings of about 7m. This degree of separation seem to be reasonable for an urban situation. I have not seen evidence to show that the degree of shading is at such an unreasonable and excessive degree as to warrant the proposed works.
8. The appeal tree has amenity value by virtue of its size, form and foliage, and the extent of its local visibility. If local residents are reported in the appeal submissions as having been indifferent to the application to fell, I do not see this as pressing evidence that the appeal tree does not have amenity value or that it is not worthy of retention. In fact I have seen several submissions from third parties relating to the appeal, which does not suggest complete indifference.
9. Turning to third party representations in support of the application, most reiterate the matters raised in the application and appeal submissions, to a greater or lesser degree. The nearest properties have shade towards one end or the other of the day and otherwise have reasonable degrees of sunlight. In the matters of materials shed by the tree I have not seen additional information in the third party submissions sufficiently pressing to warrant felling.
10. The third party submissions raise the matters of television reception and solar panels. The tree has been present substantially in its present form for some years, and is clearly a feature that it would be reasonable to take into account in the matters of proposed television aerials and solar panels. I do not find the issues relating to television reception of such weight as to justify the proposed felling.
11. In the matter of solar panels, I would expect any potential supplier/installer to make a detailed assessment of the cost benefits from the installation, with an assessment of the potential influence of such elements as vegetation on the ability of the panels to function. I have not seen such an assessment. Trees generally make a very significant contribution to air quality by their absorption of carbon dioxide and their release of oxygen. On the evidence I have seen I find that the benefit of solar panels do not outweigh the benefits of the appeal tree.

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12.I conclude that the reasons for felling do not outweigh the amenity value of the appeal tree and that I should dismiss this appeal.

Conclusions

13.The appeal beech tree makes a contribution to the local landscape and the proposed felling is likely to have an adverse effect on local landscape quality and on amenity.

14.On the basis of the evidence I have seen I find that the reasons for felling do not outweigh the amenity value of the tree and do not warrant the proposed works.

15.I conclude that the proposed felling of the appeal beech tree is not warranted on the evidence and I therefore dismiss the appeal.

Jonathan Fulcher

Arboricultural Inspector

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Appeal Decision

Inquiry held on 22 & 23 March & 15 April 2016

Site visit made on 24 March 2016

by **Terry G Phillimore MA MCD MRTPI**

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

Decision date: 04 May 2016

Appeal Ref: APP/V2255/W/15/3135521

Norton Ash Garden Centre, London Road, Norton, Kent ME13 0SZ

- 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 BMW (UK) Trustees Limited against the decision of Swale Borough Council.
- The application Ref 14/505933/FULL, dated 21 November 2014, was refused by notice dated 23 April 2015.
- The development proposed is the change of use of the land from garden centre to residential comprising the construction of 67 no. houses.

Decision

1. The appeal is dismissed.

Procedural Matters

2. A unilateral undertaking containing planning obligations pursuant to section 106 of the Act was submitted at the inquiry.
3. Amended plans have been prepared by the appellant during the appeal. These show some revisions to layout, in particular with respect to parking provision. The amendments overcome the objections raised by the local highway authority with regard to parking and other aspects of on-site highways layout, as reflected in the reasons for refusal on these grounds. Neither the Council nor any other party has raised objection to the development being considered on the basis of the revised plans. The changes are relatively minor, and their acceptance would not give rise to any prejudice. I therefore proceed to consider the appeal on that basis.

Main Issues

4. The main issues are:
 - a) the implications of the local housing land position including with respect to the application of relevant development plan and national policies;
 - b) the effect the development would have on the character and appearance of the area;
 - c) whether there are significant shortcomings in the sustainability of the site's location;

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- d) whether the proposal overall amounts to sustainable development.

Reasons

Development plan and housing land supply

5. The 9.1ha site is on the south side of the A2 in the section between Faversham and Sittingbourne in a rural location. It is no longer in use as a garden centre, and the remnants of this are derelict with some areas of hardstanding.
6. Policy SP1 of the Swale Borough Local Plan 2008 requires proposals to accord with the principles of sustainable development. Principle 2 promotes the more efficient use of previously-developed and other land within urban areas. Policy SH1 sets out 6 tiers of a settlement hierarchy. Lewson Street, the nearest settlement to the appeal site, is within tier 5 as a minor development settlement where development is to be limited to infill or redevelopment within the defined built-up area. Policy E6 deals with the Countryside, which is all the land falling outside the defined built-up area boundaries. Permission will be given here only for limited categories of development, none of which apply to the proposal. Policy H2 specifies where permission for new residential development will be granted on allocated sites and within the defined built-up areas. Elsewhere, permission will only be granted in accordance with exceptions, including those of policy E6. Again, the proposal does not fall within these.
7. The proposal for residential development of this site outside a built-up area in the countryside therefore does not meet any of the policy exceptions, and is contrary to the above policies. It is thereby not in accordance with the development plan because of the fundamental nature of this policy conflict, which would involve a significant breach in view of the scale of the proposal. A finding in favour of the proposal is thus dependent on there being other material considerations to override the development plan. There is no dispute on this matter.
8. The National Planning Policy Framework sets out a presumption in favour of sustainable development. Paragraph 14 indicates that, for decision-taking, this means, 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 the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
9. The Framework sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The Framework indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.

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10. According to paragraph 49 of the Framework, 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. The above policies are agreed to be such policies on the basis of their potential effect in influencing the supply of housing land by restricting the locations where new housing may be developed.
11. There is no dispute that the Borough is unable to demonstrate a five-year housing land supply, so that paragraph 49 is engaged. Having regard to this paragraph, the above policies are not up-to-date.
12. The Council argues that progress on the emerging Swale Local Plan (Bearing Fruits 2031) is relevant to the weight that should be given to these policies. This was submitted for examination on 20 April 2015, and the examining Inspector has produced Interim Findings. The Council accepts that in its submitted form the plan has in essence been found to be unsound, but relies on the Inspector's indication that the shortcomings can be dealt with by way of main modifications. It is argued that this process has identified a clear pathway and timetable for the modifications to be achieved, with a realistic adoption date for the plan of 2017.
13. In particular, reliance is placed on the Inspector's endorsement in the Interim Findings of the emerging settlement strategy. The essence of the strategy is an approach to development based on a hierarchy of settlements, therefore carrying forward that of the currently adopted plan which includes restraint on development in this location. The Council argues that the proposal is not in accordance with the strategy, in the same way as it conflicts with the adopted plan.
14. The main modifications include an increase in the housing requirement towards meeting objectively assessed need (OAN) to 776 dwellings per annum, compared with 540 per annum in the submitted version of the plan. The Inspector has found that the Council's work to update the evidence base demonstrates that there are sufficient sites available to enable it to deliver the full OAN for the plan period whilst maintaining the settlement strategy of two planning areas, and indicated that the Council should therefore proceed to allocate sites to meet the revised target of 776 per annum. With respect to site allocations, the Inspector has concluded that the evidence base produced by the Council represents a robust and methodical analysis of non-allocated sites, and provides a sound basis for the Council to allocate additional sites to deliver the OAN. Publication by the Council of a list of allocated sites is imminent, and is not anticipated to include the appeal site.
15. The Local Plan examination is the forum by which to address the methodology of the Council's evidence base and the appropriateness of the strategy, and the relative merits of individual allocated and other sites including the ranking given to the appeal site. The Inspector has commented that the Council has a difficult but not impossible task ahead in managing the allocation of additional sites whilst maintaining the settlement strategy and taking account of localised infrastructure and environmental constraints.
16. The most recent evidence of the current five-year supply position is that it is around 3.14-3.17 years. This is a significant shortfall, which carries substantial weight. This is especially so against the intention of the Framework to boost significantly the supply of housing. Although the Council considers that it will

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be able to demonstrate a five-year supply in around 18 months, that will clearly not be straightforward, and only limited confidence can be placed on this timescale which is not fixed.

17. The proposal represents only a small fraction of the total housing provision required to come forward over the plan period under the increased target. A grant of permission would therefore not undermine the plan-making process, and as the Council accepted at the inquiry there is no material issue of prematurity in relation to the emerging plan.
18. Nevertheless, it appears that significant progress is being made towards improving the housing land supply position in the Borough, bearing in mind the recent substantial increase in the identified housing requirement. In addition, the general approach of the out-of-date policies to the location of development in the Borough has been endorsed as part of the settlement strategy of the emerging plan. On this basis moderate weight can be attached to the out-of-date policies as they reflect this approach.
19. In the current case, two specific purposes of the policies are particularly relevant, involving protection of the countryside and its landscape, and achieving a sustainable distribution of development. These are now examined in relation to the issues that follow in order to assess the weight that should be given to the out-of-date restrictive policies in these respects.

Character and appearance

20. The site is relatively flat and slightly elevated from surrounding roads. Aside from the areas of hardstanding it comprises grassland and unmanaged shrub woodland. There is a central access from the north boundary onto the A2 London Road. Immediately to the east of the site is a single detached dwelling, with an intervening substantial tree screen. Adjacent to the west boundary is the narrow Norton Lane which joins London Road as part of the Norton Ash crossroads. On the west side of the crossroads is a petrol filling station and an adjacent tyre depot, car sales and office building. The main part of the small village of Lewson Street lies 500m to the south-west, reached by Norton Lane. To the south the site adjoins farmland.
21. The proposed development would utilise the existing access from London Road, with a new internal road network linking to private driveways. Two orchard blocks would be created on the London Road frontage, on either side of the access. There would be woodland buffers around the eastern, southern and western perimeters comprising retained trees and new planting, and an avenue of trees along the main spine road. There would also be areas of open space within the site and an allotment area. The proposed dwellings would be a mix of detached, semi-detached and terraced units of two storeys, with a predominance of larger detached houses and a relatively low overall density.
22. In terms of landscape character, the site falls within the Eastern Fruit Belt as defined in the Landscape Assessment of Kent 2004. At the district scale, it lies in the Lynsted Enclosed Farmlands as defined by the Swale Landscape Character and Biodiversity Appraisal 2011.
23. The appellant has carried out a formal Landscape and Visual Appraisal of the proposal. This follows a conventional methodology, which is not challenged by the Council. It finds that the immediate locality around the site possesses

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many of the key characteristics of the regional scale Eastern Fruit Belt Character Area. However, the site itself exhibits only some of these features, in particular in that it is enclosed and has areas of strong woodland blocks. It does not currently contain any orchards or large pockets of open farmland that are typical of this rural area.

24. On this basis, and having regard to the existing partially derelict and unmanaged nature of the site and the presence of uncharacteristic and detracting features, the appellant assesses that the condition and value of the site is poor and the sensitivity to the particular development proposals is low. In my opinion, despite the site's agreed previously developed status, the current lack of structures and the extent of vegetation cover make a minor positive contribution to the rural aspect of the locality by way of a predominance of natural features. Nevertheless, the site is not covered by any national, regional or local designations to indicate an identified landscape importance (beyond being countryside). There is no convincing evidence to establish that the location should be regarded as having the status of a valued landscape under paragraph 109 of the Framework.
25. In landscape character terms, the proposed retention and reinforcement of existing woodland blocks and the new orchards along the north boundary would be in keeping with the Eastern Fruit Belt character. While the appellant considers that this would be a positive impact by comparison with the baseline position, due to the limited scale of the effect and the degree of isolation of the site it is appropriately acknowledged that the change would be too small in isolation to influence the character of the landscape character area as a whole.
26. At the more local level the appellant again asserts that there would be a positive landscape impact. This is claimed from the above vegetation effects and also from the creation of what it is argued would be a small, high quality rural settlement of traditional Kentish construction and appearance. I do not find this persuasive. The settlement type identified in the Lynsted Enclosed Farmlands Character Area is of small isolated historic villages and farmsteads, medieval houses, twentieth century infill housing, and with a characteristic development pattern one building deep alongside lanes and roads. Within the parish of Norton, Buckland & Stone, in which the site lies, there is correspondingly a dispersed distribution of settlement with relatively small pockets of housing. The closest at Lewson Street comprises around several dozen houses of various ages distributed along rural lanes with a main core and a few outlying dwellings.
27. In contrast, the proposal would introduce a single development of 67 dwellings with one vehicular point of access from the adjoining main road network. Although the buildings would display vernacular elements in their designs, and a degree of variety in detail and orientation, the prevailing character would be of an essentially suburban low density cul-de-sac type rather than one typical of this rural area. As the Council argues, there is nothing notably radical or indicative of a new model hamlet in the design. Despite the provision of footpath links across the site, the development would be of an inward facing nature. The appellant was unable to identify any existing residential estate development of this scale within the 3km study area of the appraisal. The proposal would therefore be an uncharacteristic form of built development in the locality, and the extent of incongruity would result in a degree of negative impact on landscape character.

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28. The adverse effect involves the relationship of the proposal to the rural setting rather than intrinsic shortcomings in the design of the scheme, which in itself can be regarded as of reasonably high quality. Further, in visual terms, the site at present has a restricted visual envelope. With the proposed retention and reinforcement of boundary vegetation, that would remain the case. The proposal would result in some changes to views from locations to the north of the site, which are gained predominantly from a part of the A2 adjacent to the site and a short section of footpath to the north-west. These views are mainly experienced by those in vehicles travelling along the A2, and are agreed not to represent high value amenity or recreational views due to the detracting influence of the main road. The proposed new orchard blocks would be a positive visual element along this section of the A2, in keeping with the fruit belt quality of the locality. There would also be a benefit from removal of the existing derelict visual elements on the site.
29. It is likely that views of the new houses from outside the site would be limited to glimpses due to the set back of the development and boundary screening. The external visual effect of the development would therefore be largely neutral or a minor positive one. Within the site there would be a strong appearance of housing development replacing a largely natural landscape, which is a negative impact given the countryside location, despite the agreed previously developed status of the site.
30. The Council contends that the proposal conflicts with policies E1, E9 and E19 of the Local Plan. These policies set out general development control criteria, seek to protect the quality, character and amenity of the Borough's landscape, and require development to be of a high quality design. Generally I regard the scheme to be of an appropriate quality, and where significant conflict with these policies arises it is from the impact on landscape character and appearance of the introduction of a substantial housing estate within an open rural site rather than as a result of design shortcomings of the scheme. Conflict with the recognition sought by the Framework of the intrinsic character and beauty of the countryside is limited in the same way. Such conflicts can be expected to arise from any residential development in the countryside. In this case there would be no loss of agricultural use, and the site is previously developed land. There would be some minor landscape benefit from the new orchard planting to offset the adverse effects, and the overall degree of harm would be no more than moderate.
31. In terms of landscape impact the proposal would therefore not seriously harm any specific purpose of the out-of-date countryside protection policies that is additional to a resistance in principle to housing development in this location. The degree of adverse impact of the proposal on character and appearance does not warrant any more than limited weight being placed on the policies in these respects.
32. A further consideration is what is agreed to be a viable fallback position. This involves implementation of a permission granted in 2001 for a 'major garden centre and family attraction based on a range of open air attractions'. The approved scheme includes 13,675sqm of covered floorspace for garden centre and related uses with 750 car parking spaces on the London Road frontage. The permission remains extant due to partial implementation by way of frontage works. Comparisons of the current proposal with that scheme need to take account of the very different nature of the uses and benefits that might

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arise from it. Nevertheless, it appears that the approved development would comprise prominent, uncharacteristic features in the form of large areas of hardstanding, car parking and modern commercial buildings. This would involve an extent of intrusive urbanisation in the character and appearance of this rural locality. Assessed against this background, the proposal would result in a notably reduced degree of landscape harm.

Sustainability of location

33. Paragraph 55 of the Framework is cited both in favour and against the proposal. The appellant relies on the first part of the paragraph, which states that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities; for example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Conversely, the Council argues that this requirement is not met, and that the avoidance of new isolated homes in the countryside as sought by the second part of the paragraph is applicable (with none of the illustrative special circumstances that can justify such housing being relevant in this case, which is not disputed).
34. The appellant describes the proposal as a 'village style' development. However, other than some allotments and areas of open space/playspace, it would contain no community facilities. As set out above, it would in essence be a suburban-type housing estate. Existing services dispersed around Lewson Street comprise a public house, village hall, church, some sports facilities, and a convenience shop at the petrol filling station. The appellant expects these various services to be used by occupants of the development in the same way as they are said to be used by residents of Lewson Street and the other nearby small groups of dwellings within the local area, arguing that this would thereby help to support these services and others further afield. However, there is no specific evidence on the capacity and level of existing use of the facilities or the likely degree of benefit from additional patronage. The generalised nature of the appellant's case on this point, and the absence of any addition to local facilities within the development itself (which would substantially increase the number of dwellings in the area), are factors that limit the weight that can be given to a potential boost to vitality of the rural community.
35. Conversely, I agree with the appellant that the term 'isolated homes' does not apply readily to a development comprising 67 dwellings that could accommodate up to around 200 persons. The new homes would neighbour a large number of others within the development itself, as well as being relatively close to existing dwellings in the local area, and in that respect would not be isolated.
36. To conclude on paragraph 55, there is no firm evidence that support for existing services would be a significant benefit of the scheme. It would also not give rise to new homes that in themselves could be characterised as isolated. This paragraph therefore is neither strongly in favour nor against the proposal.
37. There is the further question of whether the development as a whole would be isolated in terms of the accessibility of the full range of necessary services and facilities. Here the issue is the need for travel and the scope for this to be by non-car modes.

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38. The local facilities around Lewson Street referred to above are all within reasonable walking distance. Norton Lane has no footway and is a rural lane, but a new footpath link within the site along the west boundary would improve pedestrian connectivity in this direction, such that the facilities could be reached by foot in relative comfort. However, these local facilities are very limited in nature, and could not be expected to cater for many of the needs of incoming residents. This includes the petrol filling station shop; despite comparisons made with a typical village shop, it is likely that this would be used for no more than top-up shopping. For all other services residents would need to travel further afield. Given the scale of the proposal, it would therefore lead to a need for a significant extent of travel.
39. Some higher order facilities are available in the local service centre of Teynham, the main part of which is around 2km to the west along the A2. There is a footway along this part of the A2, and in terms of distance and topography this would be a manageable walk for many people. However, in spite of being largely through open countryside, in my experience the walk was made very unpleasant by the amount and speed of traffic, with a 60mph limit applying on this single carriageway section of road. Although limited as a percentage of overall traffic, fast moving HGVs were a particular adverse factor due to their proximity to the footway. I walked the route at a time when vegetation alongside the footway had been recently cut back. Conditions for pedestrians would be still less favourable with fuller growth narrowing the effective footway, which is likely to be the case at other times. The route is also unlit, and with the nature of the road I regard the appellant's suggestion that in darker hours the flow of traffic would provide constant surveillance that would reassure pedestrians as unconvincing. Overall I consider that this walk would be undertaken willingly by very few residents on the site, and certainly not for example by those with young children as a route to the primary school in Teynham, which lies beyond 2km. The attractiveness of the alternative route of Lower Norton Lane and then westwards along Lower Road would also be significantly limited by distance and the nature of the road with no footway.
40. In terms of cycling, a large part of the latter route, and starting from within around 800m of the site, is on National Cycle Route 1. This connects with Teynham in around 10 minutes, and the towns of Sittingbourne (some 6-7km to the west of the site) in 25 minutes and Faversham (some 4-5km to the east of the site) in 23 minutes. The route and distances are reasonable for keen cyclists, but the narrow rural lanes shared with vehicles would in my view be unattractive to less experienced or committed cyclists even as a route to Teynham, which would also apply to cycling along the A2.
41. A bus route along the A2 connects with Sittingbourne in around 12 minutes and Faversham in around 9 minutes. All of the development would be within 400m of this, with a bus stop proposed to be relocated nearer to the site. The service is twice an hour at peak times and a minimum of hourly otherwise, with other services targeted at school travel. Bus travel could provide a means of access to the higher order services and employment of these towns. However, this in itself does not overcome the need to travel significant distances to the facilities, and it is likely that many would choose the convenience of the private car over bus travel.
42. For travel further afield, as well as the bus to Maidstone, regular trains run from Teynham station to London in the morning and evening peaks. These

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services provide a feasible public transport option. However, it would require travel to Teynham, which for many would involve a car journey.

43. The location therefore offers some choice of travel by bike and public transport, but walking would not be an option to access many facilities and cycling would be attractive only for some residents. Realistically I agree with the Council that in this location the private car would overwhelmingly be favoured and relied upon for the majority of trips given the restrictions of the alternatives and the relative remoteness of the site.
44. Part of national policy in the Framework requires the opportunities for sustainable transport modes to be taken up depending on the nature and location of the site (paragraph 32). A travel plan is put forward for the proposal, which the Framework refers to as a key tool to this end. No additional potential means to encourage the use of non-car modes with the development that have not been taken up have been identified. National guidance also recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas (paragraph 29).
45. However, a further aspect of national policy in the Framework is that planning should actively manage patterns of growth in order to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable (paragraph 17). The appellant suggests that the latter does not apply to the scheme on the basis that it does not amount to significant development. There is no specified threshold for this, but in my opinion this proposal for a development of 67 dwellings should be regarded as such. It is notable that its scale exceeds that of any existing residential development in the local area, including the whole of Lewson Street, and it is relatively large also by comparison with the size of Teynham.
46. Consistent with this national guidance on the location of development, Local Plan policy SP1 requires development to be located so as to provide the opportunity to live, work and use local services and facilities in such a way that can reduce the need to travel, particularly by car (principle 8); and be located to promote the provision of transport choices other than the car (principle 9). These policies also accord with the requirement of the Framework (paragraph 37) that planning policies should aim for a balance of land uses so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities. The settlement strategy of the Local Plan of directing development to the most sustainable locations is taken forward in the emerging plan. Having regard to the above assessment, in particular the need for travel that would be generated and the likely degree of car dependence, the proposal is contrary to these national and development plan policies.
47. The above principles as part of policy SP1, in view of their effects in restricting the locations of new housing and the current five-year housing land position, are out-of-date. However, I consider that in the context of this proposal and having regard to national policy they should still be accorded significant weight. While opportunities for sustainable travel are more limited in a rural area, there is no specific reason aside from housing land supply considerations to warrant a housing development of this scale and type to be accommodated within this

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rural location. It would amount to a suburban housing estate off a main road physically disconnected from any existing settlement, and there is nothing material within the development itself that would reduce the need to travel.

48. The appellant cites the Council's inability at the inquiry to identify specific sites towards rectifying the five-year deficit that are in more favourable locations than the appeal site in sustainable transport terms. However, that is not determinative given the progress made towards improving the housing land position through the emerging local plan preparation referred to above.
49. With respect to the fallback position of implementation of the permitted garden centre development, the accepted evidence indicates that this would generate considerably more peak and overall vehicular traffic than the proposal. It is also likely that there would be limited non-car journeys associated with the garden centre. The appellant argues that the appeal proposal would therefore result in a reduction in trips and greenhouse gas emissions. However, the fallback permission is for a very different type of development. There is also no firm evidence on the effect that the garden centre in this location would have on trips to such a facility in terms of diversion from existing centres, or the extent to which visits would be part of existing journeys. Relative comparisons of total travel are therefore difficult to make and lacking a firm basis. In that context I give little weight to this factor, which in itself does not warrant a residential development in an unsustainable location.
50. The proposal is therefore contrary to national and development plan policy on the location of development, and would give rise to harm in terms of need for travel and reliance on car use.

Sustainable development

51. The Framework defines sustainable development on the basis of the policies in its paragraphs 18 to 219 taken as a whole. It sets out that there are three dimensions to sustainable development: economic, social and environmental.
52. As noted above, the provision of additional housing is in line with national planning policy, and is an economic and social benefit. This is an important positive aspect of the proposal, particularly with the serious shortfall in housing land supply. Specifically, the provision of a significant number of affordable dwellings (at some 30% of the units), secured by a planning obligation, is a matter that carries substantial weight given the pressing need for such housing. The appellant's evidence that the appeal site could be delivered within 5 years in its entirety is not disputed, and therefore it would provide a significant boost to supply. The proposal would also add to the choice of housing in the Borough by the provision of good quality housing away from an urban location.
53. As well as this new housing, the development would bring a number of economic benefits that are undisputed by the Council, encompassing investment and jobs and local spending. In social terms, obligations and conditions would deal with some needs that would arise from occupiers of the development. However, claimed potential benefits with respect to community vitality lack tangibility in the absence of firm evidence on the circumstances of existing local facilities and how vitality would be maintained or enhanced, and this factor therefore carries limited positive weight.

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54. In environmental terms, the proposal would involve the bringing back into use of previously developed land. The re-use of such land is promoted by national policy, and this is a positive factor. Further, although in a countryside location, there would be no loss of agricultural land. There is evidence to suggest that the use of Best and Most Versatile agricultural land will be necessary to meet the Borough's housing requirements. The accommodation of a significant housing development that would avoid the use of such land is therefore also a positive factor of some weight. There would be some minor landscape benefits, and the overall degree of harm to character and appearance would be no more than moderate.
55. There is no dispute that the proposal would safeguard and enhance habitat and biodiversity by including additional tree and orchard planting, and a variety of open natural and managed vegetation. Potential adverse effects on the Swale Special Protection Area could be addressed by a planning obligation to secure mitigation measures.
56. The appellant's evidence establishes that the traffic impact of the proposal could be satisfactorily accommodated on the road network. However, the proposal would give rise to a significant need for travel, much of which could be expected to be car dependent.
57. By comparison, the landscape and traffic impacts of the fallback garden centre development would be greater. However, these impacts have been accepted by way of the permission granted, and there is no evidence to suggest that they would be unacceptable in themselves. There is some expressed support for that development, and the Council suggests that it would be a community facility. It would also involve re-use of previously developed land. A garden centre would be a potential employment use, but there is no objection to the appeal proposal raised by the Council on any impact on this ground, and no relevant policy or evidence to suggest that it is an important factor. Overall I find that the fallback position does not amount to a strong consideration either for or against the appeal development.
58. The proposal therefore rates well on some aspects of sustainability. However, it amounts to the creation of a suburban housing estate in a rural location with few facilities in the immediate locality. As a result the proposal is not in a sustainable location, and does not represent development in the right place. Taking into account the above performance of the proposal on the three dimensions, and the full advice of the Framework, overall I consider it not to amount to a sustainable development.

Overall Balance and Conclusion

59. The proposal is in fundamental conflict with the development plan by reason of the location of the site within countryside outside any settlement. However, in the context of the serious shortfall in housing land supply the relevant policies for the supply of housing are not up-to-date. Nevertheless, progress being made towards improving the housing land supply position in the Borough as part of the emerging development plan, and the settlement strategy of this, warrant moderate weight being attached to the policies as an approach to the location of development in the Borough.
60. There would be some minor landscape benefit from the proposal and the overall degree of harm to the character and appearance of the area would be

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no more than moderate. This warrants only limited weight being placed on the countryside protection policies in terms of their landscape purposes.

61. The out-of-date policies also relate to seeking a sustainable distribution of development. The purposes of this accord with national policy, and these elements of the policies and the conflict identified with them merit significant weight.
62. The proposal would deliver a number of benefits, in particular by way of new housing. However, when assessed against the policies of the Framework taken as a whole, these would be significantly and demonstrably outweighed by the adverse impacts of the additional need for travel and likely car dependence that would result from effectively a new suburban housing estate in a relatively remote rural location. The prospect of the fallback development of the permitted garden centre, and the comparison of impacts made with the appeal scheme, do not indicate that a different conclusion should be reached. The proposal overall amounts to development which is not sustainable, as well as not being in accordance with the development plan.
63. For the reasons given above and taking into account all other matters raised I conclude that the appeal should be dismissed.

T G Phillimore

INSPECTOR

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

<p>Laura Phillips of Counsel</p> <p>She called:</p> <p>Shelly Rouse BA DipTP MRTPI</p> <p>Heather Murton BA DipTP MRTPI</p>	<p>Instructed by Head of Legal Services, Swale Borough Council</p> <p>Senior Policy Planning Officer, Swale Borough Council</p> <p>Senior Planning Officer, Swale Borough Council</p>
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FOR THE APPELLANT:

<p>Reuben Taylor QC</p> <p>He called:</p> <p>Andrew Cox CMLI DipLA BA</p> <p>John Wilde BEng(Hons) MCHIT</p> <p>Michael Drury BA MRTPI</p>	<p>Instructed by Gowling WLG (UK) LLP</p> <p>Head of Landscape, Lloyd Bore Ltd</p> <p>Director, C & A Consulting Engineers Ltd</p> <p>Planning Partner, BDB Design LLP</p>
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INTERESTED PERSONS:

<p>Councillor Lloyd Bowen</p> <p>Anthony Trim</p> <p>Jillian Barr</p>	<p>Member of Swale Borough Council for Teynham and Lynsted</p> <p>Chairman, Norton, Buckland and Stone Parish Council</p> <p>CPRE Kent</p>
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Inspector’s Interim Findings on Swale Local Plan - Part 3
- 2 Plan no. 2485-11A
- 3 Plan no. 2485-14A
- 4 Draft s106 unilateral undertaking
- 5 Completed s106 unilateral undertaking
- 6 Appellant’s schedule of policies for the supply of housing
- 7 Council’s additional suggested conditions
- 8 Thames, Medway & Swale Estuaries – Strategic Access Management and
Monitoring Strategy
- 9 Phase 1 – Bird Disturbance Report (extract)
- 10 Extract from Swale Borough Local Plan Part 1 Publication version (December
2014)
- 11 Extract from Swale Borough Local Plan 2008
- 12 Council’s closing submissions
- 13 Appellant’s closing submissions

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Appeal Decision

Site visit made on 13 April 2016

by **David Reed BSc DipTP DMS MRTPI**

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

Decision date: 5 May 2016

Appeal Ref: APP/V2255/D/15/3140640

1 Manor Cottages, Crockham Lane, Hernhill, Kent ME13 9JY

- 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 & Mrs Layton against the decision of Swale Borough Council.
 - The application Ref 15/507498/FULL, dated 9 September 2015, was refused by notice dated 5 November 2015.
 - The development proposed is two storey extension to existing residential dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the application the proposal was amended with the substitution of a revised roof form for the extension. I have dealt with the appeal on the basis of these amended plans.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the building concerned and the group of houses of which it forms part, including any effect on the Hernhill Conservation Area.

Reasons

4. Manor Cottages are a row of ten uniform and unspoilt mid 20th century council houses in a backland position facing in the direction of Crockham Lane. Whilst screened from the main part of the village they form a single coherent group with a pair of semi-detached houses at each end, set slightly forward, with two terraces of three houses each between. All ten houses face towards a large open grass area to the front which provides an important setting for the group as a whole.
5. No 1 is a semi-detached property at the far end of the group, furthest from the communal access path. Unlike the others, and because of this end position, its front garden is divided from the open grass area by a low fence and hedge and is put to more active leisure use than the others. However, the front elevation of the house and the other half of the pair, No 2, are clearly visible as an integral part of the overall group of ten houses.

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6. The proposal is to extend No 1 with a two storey extension at the front corner of the house, extending both to the front and to the side, wrapping round the corner. The extension would project about 2.9 m from the front elevation of the house, starting about 3.5 m from the common boundary with No 2, and about 1.9 m from the side elevation of the house towards the side boundary of the property. The extension would provide a large entrance hall on the ground floor and a larger, dual aspect fourth bedroom and bathroom on the first floor.
7. The extension would be built in matching materials, with some similar windows and a pitched roof to reflect that of the host building. It would be smaller and with a lower ridgeline than the existing house. However, by extending both to the front and side the attractive symmetry of the pair of semi-detached houses would be completely lost, and on a larger scale the attractive symmetry of the whole group of ten houses would be lost too.
8. Contrary to the appellant's view, the proposed front projection would be an intrusive rather than welcoming feature when seen from the open grass area in front of the houses. This works effectively as a communal open space allowing an unspoilt and unbroken view of the façade of the ten houses. There are no other front extensions to these properties, which form a simple but unified whole, and the fact that No 1 is at the far end does not reduce its important visual contribution to the overall group. The front doors of all the houses face south, equally welcoming whether at the beginning or the end of the row.
9. The bulk, mass and awkward roof form of the extension would amount to an over dominant and discordant addition to the property. It would conflict visually with the simple rectangular shapes and hipped roof forms of the other properties in the row, resulting in an incongruous feature damaging to the character and appearance of the host building, the pair of semi-detached houses involved and the terrace as whole.
10. No 1 is well screened by tall hedgerows and fencing from Walnut Tree House and the grounds of the Red Lion Public House to the west and south. This boundary also corresponds with the boundary of the designated village Conservation Area (which excludes Manor Cottages). Whilst the impact of the proposal on the village and the Conservation Area as a whole would not be significant, and its overall character and appearance would be preserved, there would nevertheless be a more local impact on the character and appearance of the building and Manor Cottages which warrants refusal in this case.
11. For these reasons the proposal would cause significant harm to the character and appearance of the building concerned and Manor Cottages as a whole. This would conflict with Policies E1, E19 and E24 of the Swale Borough Local Plan 2008 which require development to be of a scale, design and appearance appropriate to the location, to relate to its context in respect of scale, height and massing, and for extensions to be of high quality design.
12. The appellant argues that the south elevation of the house is not the 'principal elevation' in this case and that there are permitted development rights to extend in that direction. However, with the front door on this elevation it is clearly the main, entrance elevation even though unusually it does not front onto a highway.

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Conclusion

13. The benefits of additional living accommodation, the opportunity to upgrade the property to lifetime homes standard and to improve energy efficiency are fully appreciated. The proposed extension would not impact upon the living conditions of nearby occupiers, would not create a terracing effect and, given its location, would not affect the character and appearance of the village as a whole. However, the proposal would significantly harm the character and appearance of the host building and Manor Cottages as a group, and in these circumstances the appeal should be dismissed.

David Reed

INSPECTOR

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Appeal Decisions

Site visit made on 14 March 2016

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 09 May 2016

Appeal Ref: APP/V2255/C/15/3132093

Land adjacent Chandlers Croft, fronting Swale Way, Kelmsley, Sittingbourne, Kent.

- 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 Taylor Wimpey South East against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 10 July 2015.
- The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission Ref SW/05/0574 (Case 110) granted on 11 July 2005.
- The development to which the permission relates is 'Reserved matters of SW/91/0125 as amended by SW/01/0831 for the hard and soft landscaping to new housing site.' The condition in question is No 1 which states that: 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 District Planning Authority. The notice alleges that the condition has not been complied with in that in the area identified on the attached plan the hard and soft landscape works have not been carried out in accordance with the approved details.
- The requirements of the notice are: 'Remove the bund and fencing in its entirety and carry out the hard and soft landscaping of the land in accordance with the details approved under application reference SW/05/0574.'
- The period for compliance with the requirements is twelve months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

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

Appeal Ref: APP/V2255/W/15/3129838

Land at Chandlers Croft, Kelmsley Area B, Swale Way, Kemsley, Sittingbourne, Kent.

- 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 Taylor Wimpey South East against the decision of Swale Borough Council.
- The application Ref 14/505359/FULL, dated 4 November 2014, was refused by notice dated 5 May 2015.
- The development proposed is retrospective application for the retention of a bund and fencing and associated proposed landscaping.

Summary of Decision: The appeal is dismissed.

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Background

1. The appeal site forms the northern and eastern extent of the housing development known as Kemsley Fields and is located about 800m from the A249, east of the Sheerness Railway Line. Swale Lane is to the north and east of the appeal site and is a distributor road serving industrial development in the local area. It becomes elevated to the west of the appeal site and rises over the Sheerness Railway Line. Swale Way forms the outer limit of residential development at Kemsley with industrial development beyond.
2. The approved hard and soft landscaping works for the residential development, including the appeal site (reference SW/05/0574), are stated to have comprised a 16m wide flat landscaped belt and a 1.8m high brick wall built on the back edge of the footway around the outer perimeter of Kemsley Fields. There were no proposals for formal pedestrian access to this landscaped belt.

Appeal A on ground (a)

3. In the case of Appeal A, a breach of condition case, the deemed application contained within the ground (a) under s177(5) is a retrospective one, to carry out the original development without complying with the particular condition enforced against.

Main issues

4. The main issues in relation to both Appeal A and Appeal B are the effect of the bund on the character and appearance of the area and on the living conditions of adjacent residents.

Character and appearance

5. The local landscape context is largely flat and open land, which slopes gradually down to Milton Creek to the south east. The surrounding land uses are mixed and include large industrial buildings such as Kemsley Paper Mill and the Morrisons Supermarket Distribution Warehouse alongside areas of newly constructed residential development. There are overhead power cables and pylons. There are some areas of undeveloped land some with native species scrub, grass and marshland. The bund is a man made form, seen within the context of a road, industrial and residential development, which is viewed along Swale Way and from within adjacent residential gardens and dwellings, and also from the estate roads where gaps between buildings allow views through to it.
6. The appellant has provided details of a landscaping scheme for the currently grassed bund which includes a mixed native species hedgerow and groups of trees alongside Swale Way. The post and rail fence alongside the footway with Swale Way would remain.
7. The appeal site separates the residential development from Swale Way. There are buildings adjacent to the area (with about 50% of these being garages), private gardens, an area of open space and parking courts immediately to the south and west of the appeal site. To the north and east is Swale Way.
8. Within the local landscape context the bund does not detract from the limited number of positive features and overall is not detrimental to the character or appearance of the area. The proposed planting would add interest and provide

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and landscaped buffer between the residential properties and the road, and would not, in my opinion, appear out of place.

9. I am satisfied that, with appropriate planting and maintenance the bund would mature into an acceptable landscape feature, alongside Swale Way. As such, subject to the proposed landscaping being achieved, it complies with Policies E1 and E19 of the Swale Borough Local Plan 2008 (LP) by responding positively to positive features of the site and locality, being well sited and having a high standard of landscaping with native plant species.

Living conditions

10. Although formal pedestrian access to the landscape buffer zone was not previously envisaged, or planned for in the landscape buffer zone, it is clear that people do access this area and currently go onto the bund and walk along it. I was able to walk the full length of the bund, albeit climbing over a fence (with the parties and local residents) to access the area.
11. There are unrestricted views into the relatively short rear gardens of those properties backing onto the landscape buffer zone from the bund. Due to the proximity of the bund to the residential properties there are views from it not only into the rear amenity areas but also into the ground floor windows and conservatories and to the first floor windows. I find that the bund facilitates an unacceptable and significant loss of privacy for those occupiers, both within their gardens and within their dwellings. As such, the development fails to comply with Policy E1 which requires development to cause no demonstrable harm to be residential amenity.
12. Furthermore it is contrary to one of the core planning principles set out in the National Planning Policy Framework which is to seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
13. The appellant has proposed landscaping the bund including locating dense, thorny species such as hawthorn and blackthorn on the top of the bund with a higher concentration of these species closest to Swale Way. The appellant considers this will overcome the issue of loss of amenity to local residents.
14. Interested parties have referred to the bund containing builders waste, broken plastic pipes and old bricks, with a small amount of earth on top. Broken man hole covers are also referred to. I saw that there were bits of brick, some metal rods and other waste within the bund at the time of my site visit. The materials within the bund have raised concerns that landscaping would not be able to become fully established. However, the Council are satisfied that, with proper preparation, landscaping will survive.
15. I accept that landscaping as proposed could provide some mitigation of the adverse effect of people walking along in the elevated position that is provided by the bund, on the privacy of adjacent occupiers. However, it would take time to establish during which time there would be a significant and unacceptable loss of privacy to adjacent occupiers. Third parties would be able to access the area and create pathways through the planting as it grew which would not necessarily result in any loss of plants or require any to be replanted as part of the maintenance regime. I therefore am not satisfied that the proposed landscaping would provide a sufficient or a permanent deterrent to third parties accessing the bund and looking into the adjacent residential gardens and

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dwelling. As such, the provision of landscaping would not make an unacceptable development acceptable.

Other matters

16. I note that concerns have been raised about noise issues associated with the traffic on Swale Way. However, no acoustic barriers were required as part of the planning permission for the future occupiers of the residential development within the area of the appeal site.
17. I note that the Environmental Services Manager (ESM) was consulted in relation to the Appeal B planning application. The ESM stated that the removal of the large bund and its replacement with a 1.8m high brick wall built on the back edge of the highway would not benefit the residents of the development in terms of noise attenuation. The ESM states that a 2m high earth bund, properly constructed and landscaped, would be more favourable in terms of noise mitigation, but there is no firm evidence before me which demonstrates that this is the case.
18. However, there is no substantiated evidence that the bund which has been constructed satisfies the ESM in terms of being 'properly constructed'. Moreover, there is no substantiated analysis of the noise attenuation qualities of either the brick wall or the bund in terms. Thus I have no substantiated evidence on which to conclude that the bund would be materially better, in terms of sound attenuation for the adjacent residents, than the approved brick wall. I am therefore unable to weigh the benefits of the bund in terms of sound attenuation against the harms I have identified. In the absence of such evidence, I give little weight to the comments of the ESM.

Conclusion

19. Whilst I have found no harm to the character and appearance of the area and considered the possibility that the bund would provide a greater amount of sound mitigation than the approved scheme, this does not outweigh the harm I have found in relation to the living conditions of adjacent residents. For the reasons given above I conclude that the ground a appeal for Appeal A and Appeal B should be dismissed.

Appeal A on ground (f)

20. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellants must detail specific lesser steps which, in their view, would overcome the objections to the appeal development.
21. The appellant considers that there are two lesser steps that would overcome the objections to the appeal development. Firstly, that landscaping of the bund would overcome the issues of overlooking to the residential neighbours by making access onto the bund impractical and improbable. Secondly, that the post and rail fencing allows for the appreciation of the verdant and open character of the residential estate beyond and seeking its replacement with the approved walling would be disproportionate to remedy any injury to amenity.
22. I have dealt with landscaping the bund and whether or not that would overcome the harm I identified in relation to the ground (a) appeal above. In relation to the post and rail fence, whilst this would not result in harm to the

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character and appearance of the area, it is seen as an alternative to the approved wall by the appellant. As I understand it, a vertical barrier of 1.8m high was necessary to achieve acceptable internal noise levels within the permitted residential dwellings. The approved scheme provides that vertical barrier in the form of a wall and I have found that there is no substantiated evidence to show that the bund provides the same, or improved, level of protection. The post and rail fencing would not achieve, in my view, the same result. Therefore on the evidence available, the post and rail fencing would not provide adequate safeguards in terms of noise to the adjacent residential occupiers.

23. I find that, in the absence of cogent evidence to the contrary, the requirements of the Notice in Appeal A are not excessive. Accordingly, the Appeal A on ground (f) fails.

Conclusions

24. For the reasons given above I conclude that both Appeal A and Appeal B should fail. I shall uphold the enforcement notice to Appeal A and refuse to grant planning permission on the deemed application.

Formal decisions

Appeal A

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

Appeal B

26. The appeal is dismissed.

Hilda Higenbottam

Inspector

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