

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 7 December 2017

Time: 7.00 pm

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

Membership:

Councillors Mike Baldock, Cameron Beart, Bobbin, Andy Booth (Vice-Chairman), Roger Clark, Richard Darby, James Hall, Nicholas Hampshire, Harrison, Mike Henderson, James Hunt, Ken Ingleton, Nigel Kay, Peter Marchington, Bryan Mulhern (Chairman), Prescott and Ghlin Whelan.

Quorum = 6

	Pages
1. Fire Evacuation Procedure	
<p>The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.</p> <p>The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.</p> <p>The Chairman will inform the meeting that:</p> <p>(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and</p> <p>(b) the lifts must not be used in the event of an evacuation.</p> <p>Any officers present at the meeting will aid with the evacuation.</p> <p>It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.</p>	

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the Minutes of the Meeting held on 9 November 2017 (Minute Nos. 314 - 320) 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 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. Report of the Head of Planning Services

1 - 113

To consider the attached report (Parts 2 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 6 December 2017.

6. 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 5 and 7.

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
7. Information relation to any action in connection with the prevention, investigation or prosecution of crime.

7. Report of the Head of Planning Services

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To consider the attached report (Part 6).

Issued on Tuesday, 28 November 2017

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

Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

7 DECEMBER 2017

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PART 2 Applications for which permission is recommended

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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) (England) Order 2015

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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PLANNING COMMITTEE – 7 DECEMBER 2017

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 17/503349/FULL			
APPLICATION PROPOSAL Erection of chalet type dwelling with detached garage (Resubmission of 16/506230/FULL)			
ADDRESS 9 London Road Newington Sittingbourne Kent ME9 7NP			
RECOMMENDATION Grant subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal provides an additional dwelling within the built up area boundary and in my view overcomes the reason for refusing the previous application on the site and the comments of the Inspector in the subsequent appeal.			
REASON FOR REFERRAL TO COMMITTEE Recommendation contrary to Parish Council views.			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN Newington	COUNCIL	APPLICANT Mr M Anderson AGENT Prime Folio
DECISION DUE DATE 01/09/17	PUBLICITY EXPIRY DATE 24/10/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/506230/FULL	Erection of chalet type dwelling with detached garage.	Refused and dismissed at appeal (PINS ref: 3165376)	17/10/2016, appeal dismissed on 29 th March 2017

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 No.9 London Road is a large detached two storey property with a generous amount of hardstanding to the front and a large amount of private amenity space to the rear.
- 1.02 The property is situated on an access road which runs parallel to the A2 and the dwelling is elevated above the main highway. A part of the private amenity space to the rear is sandwiched between No.20 and No.30 The Willows.

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the erection of a chalet type dwelling in the rear private amenity space of No.9 London Road. Due to the layout of the application site the proposed property would address The Willows with vehicular access also taken from here.
- 2.02 The property would have a footprint of 13.3m x 7.8m with a frontward projecting element of 1.9m in depth and 4m in width. The property would have a pitched roof measuring 2.6m to the eaves and 7.1m in overall height. As stated above, it would have a frontward projecting element with a pitched roof, the ridgeline of which would be turned 90 degrees to the main roof. This element of the dwelling would measure 5m to the eaves and 7.1m in overall height. The front facing roofslope includes two pitched roof dormer windows and a rooflight whilst the rear facing roofslope has 5 rooflights which will be obscure glazed.
- 2.03 A detached single garage is proposed adjacent to the dwelling measuring 2.7m in width, 5.3m in depth, 2.4m to the eaves and 4.4m in overall height. A driveway will be created from the site boundary with The Willows leading up to the garage.
- 2.04 Due to the shape of the plot the rear private amenity of the new dwelling will be triangular shaped measuring approximately 9m in length at its very deepest point and 15.5m across at its widest.
- 2.05 The application site also includes the existing property at No.9 London Road and the proposal includes the obscuring and fixing shut of the rear facing first floor window of the main bedroom (closest to the proposed property) and the replacement of the first floor window in the projecting element with a triangular oriel window, with one half obscure glazed and fixed shut.

3.0 PLANNING CONSTRAINTS

- 3.01 None

4.0 POLICY AND OTHER CONSIDERATIONS

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

Development Plan - Bearing Fruits 2031: The Swale Borough Local Plan 2017

- 4.02 Policy ST1 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. meeting the full, objectively assessed need for housing in the housing market area;
- 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.

ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Newington is defined as a rural local service centre and Para.4 of the policy states that *“Other villages with built up area boundaries, as shown on the proposals map, will provide development on minor infill and redevelopment sites within the built up area boundaries where compatible with the settlement’s character, amenity, landscape setting, heritage or biodiversity value.”*

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.

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 in accordance with policy ST3.

CP4 states that all development proposals will be of a high quality design that is appropriate to its surroundings and amongst other requirements will enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening sense of place.

DM7 states that the Council will continue to apply extant Kent County Council vehicle parking standards to new development proposals.

DM14 is a general policy and sets out a number of criteria all developments are expected to accord with.

DM16 states that planning permission will be granted for alterations to existing buildings provided they, amongst other considerations, protect residential amenity.

5.0 LOCAL REPRESENTATIONS

5.01 Representations have been received from 3 separate addresses. 2 neighbouring occupiers object to the application whilst 1 supports the proposal. The objections raise the following summarised points:

- The application would give rise to further parking pressures in The Willows;
- Access to the property would be difficult with vehicles parked opposite the application site;
- The proposed garage is too small;
- The proposal would lead to the removal of large and well established trees which would affect wildlife and give rise to harm to visual amenities;
- Possible disturbance to surrounding properties caused by construction work;
- Construction noise and vehicles will give rise to harm to neighbouring amenities;
- The proposal appears unaltered from the original scheme;
- The property is not in keeping with the surrounding dwellings;
- The proposal is too large for the development site;
- The proposal would give rise to harmful levels of overlooking due to a change in site levels;
- The development would devalue existing property.

The letter of support raises the following summarised points:

- A new detached property would enhance The Willows;
- The design of the property bears a striking resemblance to the rear elevation of No.9 London Road;
- Willing to offer a piece of land to enable a wider access;

- *“With reference to previous comments made about the parking in The Willows, if the residents used their driveways and garages to their full potential this would increase the available parking on the road, also, if the people that live in Bull Lane refrained from parking their vehicles in The Willows this would also help.”*

6.0 CONSULTATIONS

- 6.01 Newington Parish Council object to the application and made the following comments:

“Councillors agree with the reason for refusal to the original application given by Swale Borough Council that 'Due to the limited separation distance between the proposed property and No.9 London Road the proposal would create an unacceptable level of mutual overlooking and significant loss of privacy leading to an unacceptable impact upon the residential amenities of both the existing and future occupiers of these dwellings. As a result the application would be contrary to policies E1 and E19 of the Swale Borough Local Plan.' This view was confirmed in the dismissal of the subsequent appeal to the Planning Inspectorate.

Whilst the address is for the main property on London Road, access to the proposed house would be via The Willows. This road already experiences problems with resident parking, resulting in complaints and requests for parking restrictions to the Parish Council; the proposal would reduce parking still further.

We note that KCC Highways have made their standard response to proposed developments of this scale. Give the concerns of additional access/egress onto the Willows we request that KCC Highways be asked to make a site visit and that this should be either in the evening or at a weekend when parking problems are severe.

The proposed property does not fit the design of houses in The Willows.”

- 6.02 The Council's Tree Consultant was consulted on the previous application. The proposal in terms of the impact upon the trees remains unchanged and as such I have repeated these comments here as follows:

“two Conifers and a self-sown Sycamore would need to be removed in order to develop the site. Whilst of mature size they are only partly visible from the adjoining road The Willows, so they have limited amenity value. The Sycamore is located closer to the road and so is more prominent within the street scene although being a self-sown specimen it is not a species of tree that is suitable for its current growing position. Based on their current condition and prominence within the area the three trees are not considered to be of sufficient quality to be an arboricultural constraint.”

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers and correspondence relating to planning reference 17/503349/FULL, 16/506230/FULL and appeal reference 3165376.

8.0 APPRAISAL

Principle of Development

- 8.01 The application site lies within the built up area boundary where the principle of development is accepted. The main considerations in this case concern the impact upon residential, visual and highway amenity.

Residential Amenities

- 8.02 The application previously submitted on this site proposed an identically sized and located dwelling to the one which permission is now being sought for. The previous application submitted on the site was refused for the following reason:

“Due to the limited separation distance between the proposed property and No.9 London Road the proposal would create an unacceptable level of mutual overlooking and significant loss of privacy leading to an unacceptable impact upon the residential amenities of both the existing and future occupiers of these dwellings. As a result the application would be contrary to policies E1 and E19 of the Swale Borough Local Plan.”

- 8.03 The application was subsequently dismissed at appeal, I have attached the appeal decision as an appendix to this report. It is important to note that the Inspector concluded that the application would cause unacceptable harm to the living conditions of future occupiers of the proposal by virtue of the proximity and available views from the rear windows, in particular the closest dormer window on the rear elevation of No.9 London Road.
- 8.04 Since the previous application was refused and subsequently dismissed at appeal the Council has adopted a new Local Plan, however the policies which relate to overlooking and the impact upon residential amenities in this regard have the same aims. As a result I am of view that the application as now submitted, in order to be acceptable, would be required to overcome the unacceptable elements that the Inspector identifies.
- 8.05 In relation to the issue of overlooking, the application drawings now show that the rooflights on the rear elevation of the proposed property will be obscure glazed with a cill height of 1.65m. Although there are now 5 rooflights proposed in comparison to 4 on the previous application, the Inspector did not raise specific concern in relation to the views from these windows and as such I take the view that as they are now being obscure glazed that this amendment would be acceptable.
- 8.06 In terms of the potential overlooking from the first floor rear windows of No.9 I note that the drawings submitted show that the rear facing dormer window serving the bedroom window closest to the proposed dwelling, separated by a distance of approximately 13m, will be obscure glazed and fixed shut. The views from this window were the Inspector's main concern and due to this amendment I take the view that any potential opportunities for overlooking would not be available. I noted on my site visit that this bedroom is served by other windows and therefore do not believe that the amenity of existing occupiers of this dwelling would be unacceptably harmed by this amendment. I have recommended a relevant condition in order to ensure this is carried out. In addition to this, the drawing shows that there would be some views available within a 45 degree visibility splay from the first floor window on the central rear projecting element of No.9 which serves a bedroom. In order to overcome this the application proposes to replace the existing window with a projecting oriel window. The window pane facing the proposed dwelling would be obscure glazed and fixed shut whilst the window pane facing away from the proposed property would be clear glazed and opening. In my opinion this would effectively mitigate against any possibility of harmful overlooking and provide a satisfactory level of outlook for the occupants of the existing property. I have also recommended a relevant condition in relation to this window. I also note the drawings show a hedge along the perimeter of the private amenity space of No.9

London Road where it adjoins the garden of the proposed property. Due to the alterations to the windows as set out above I do not believe that this would be necessary in terms of disrupting views. However, the standard landscaping condition has been recommended and would ensure that suitable planting is carried out. As a result of the above I am of the view that the amendments would overcome the reason for refusing the previous application and the comments of the Inspector and is therefore acceptable in this regard.

- 8.07 In terms of the impact upon the adjacent properties I reach the same conclusion as the assessment made under 16/506230/FULL. To reiterate, the proposed dwelling does not project either beyond the rear or the front of No.20 The Willows and as such I do not consider that it would have an unacceptable impact upon this property. On the opposite side, the detached garage will be located close to the flank elevation of No.30 The Willows, however, it will not project any further than the front elevation of this property and furthermore, as the proposed property is separated from No.30 by a distance of 5m at the closest point I do not consider that the proposal to have a significantly harmful impact upon the residential amenities of this property. I note the objection received from the occupants of No.11 London Road, however, there is a gap of 22m between the closest points of these properties. As such when this is combined with the obscure glazing of the rooflights on the rear elevation of the proposed property I consider this relationship to be acceptable.
- 8.08 Due to the slightly unusual layout of the site and the proximity to other dwelling, in particular No.9 London Road, further extensions to the development carried out under permitted development rights could have an unacceptable impact upon local amenities. As such I have recommended a condition removing permitted development rights under classes A, B, C and E.

Visual Amenity

- 8.09 As stated above, the overall design and layout of the property remains the same as per the application submitted under 16/506230/FULL. The Willows is a street comprised of a mixture of dwelling types with terraced, semi detached and detached properties. Furthermore, in close proximity of the application site, the design of the adjacent dwellings are mixed. As such, I am of the view that the introduction of a detached property, designed in the manner as described above would not be out of keeping with the streetscene and is in my view acceptable in this regard.
- 8.10 The site does have three trees (two Conifers and one Sycamore) which contribute positively to visual amenities when viewed from the private amenity space. When viewed from public vantage points the most prominent of these trees in the streetscene is the Sycamore. However, for the reasons as set out in the comments provided by the Council's Tree Consultant above it is not a species of tree that is suitable for its current growing position. Therefore I do not consider that the loss of the trees (due to the condition of the Sycamore and the location of the Conifers) would unacceptably harm the visual amenities of the area. The submitted drawings also indicate a 2m high close boarded fence along the southern boundary of the site which would be highly visible from The Willows however this is existing and therefore the impact would be neutral.

Highways

- 8.11 I note that the Parish Council have raised objections, amongst other things on the grounds that the access to the site and the parking arrangement is unacceptable. Although the proposed driveway is limited in width to approximately 2m this is still

wide enough for a car to access the site. In addition, as the access is serving a single dwelling I do not consider this to be unacceptable. Further to this, although the width of the garage is below the KCC preferred garage size there is ample room for parking on the proposed driveway. As such I am of the view that the proposal would not have an unacceptable impact upon highway safety or amenity.

Other Matters

- 8.12 A number of the points raised in the letters of objection have been dealt with in the discussion above. Of those that remain I respond as follows. As the site is not located in a designated area and the trees are not formally protected then the Council would have no control over their removal (notwithstanding the comments from the Tree Consultant). Any structural damage to surrounding properties would be a private legal matter. The development would give rise to some element of disturbance to neighbouring properties, however, I have recommended a condition in relation to construction hours and as a result do not believe that the proposal would be unacceptable in this regard. Finally, issues of property value do not constitute a material planning consideration and as such I make no further comment.

Impact upon SPA and Ramsar Sites

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

9.0 CONCLUSION

- 9.0 Overall I consider that the proposal overcomes the reason for refusing the previous application on the site and the comments subsequently made by the Inspector in dismissing the appeal. The overall scale, design and layout of the proposed property remains the same as previously considered and therefore as the application was not refused for any other reasons and the Inspector did not raise any additional issues I am of the view that the proposal is now acceptable. On this basis I recommend that planning permission is granted.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

- 2) The development hereby permitted shall take place in accordance with the following drawing: 16-34-01D (received 27th September 2017).

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

- 3) No development beyond the construction of foundations 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 in accordance with the approved details prior to the first use of any dwelling.

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

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

Reason: In the interest of visual amenity.

- 5) No development beyond the construction of foundations 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.

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

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

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

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

- 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 0800 – 1800 hours, Saturdays 0800 – 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) The area shown on the submitted layout as vehicle parking and turning space shall be provided, surfaced and drained before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

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

- 10) Prior to the occupation of the dwelling hereby approved the five rooflights on the rear elevation of the development shall be obscured glazed and fixed shut and shall remain so in perpetuity.

Reason: In the interests of residential amenities.

- 11) Prior to the occupation of the dwelling hereby approved the rear facing first floor window located to the east of the rearward projecting element of No.9 London Road shall be obscure glazed and fixed shut, as shown on drawing 16-34-01D (received 27th September 2017) and shall remain as such in perpetuity.

Reason: In the interests of visual amenities.

- 12) Prior to the occupation of the dwelling hereby approved the existing rear facing first floor window located in the projecting element of No.9 London Road shall be replaced with an oriel window as shown on drawing 16-34-01D (received 27th September 2017) and shall remain as such in perpetuity.

Reason: In the interests of residential amenities.

- 13) Upon completion, no further development permitted by Classes A, B, C or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), shall be carried out.

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

Habitats Regulations Assessment

This HRA has been undertaken without information provided by the applicant. The application site is located 2.6km south of Medway Estuary and Marshes Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

to the objectives of this Article. The proposal therefore has potential to affect said site's features of interest.

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

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

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

when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

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

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.

APPENDIX A



Appeal Decision

Site visit made on 28 February 2017

by **D. M. Young BSc (Hons) MA MRTPI MIHE**

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

Decision date: 29 March 2017

Appeal Ref: APP/V2255/W/16/3165376
9 London Road, Newington, ME9 7NP.

- 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 M Anderson against the decision of Swale Borough Council.
 - The application Ref 16/506230/FULL, dated 4 August 2016, was refused by notice dated 17 October 2016.
 - The development proposed is a chalet type dwelling with detached garage – fronting The Willows.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of future and neighbouring occupiers of the development.

Reasons

3. The proposed dwelling would be sited in the rear garden of 9 London Road which is elevated above the ground floor level of the host dwelling. It would however be accessed from, and seen in the context of, The Willows.
 4. Insofar as the appeal scheme is concerned, Policy E1 of the "Swale Borough Local Plan 2008" (the LP) seeks to ensure that new development does not cause demonstrable harm to residential amenity.
 5. It is the relationship of the new dwelling to No 9 that is the issue in this case. According to the Council the separation between the rear elevation of the existing and proposed dwelling would be in the region of 13 metres. It is further stated that the Council would normally expect a distance of 21 metres in such situations. However, neither of the policies cited in the Council's Decision Notice are so prescriptive and I have not been referred to a relevant SPG.
 6. Nonetheless, 21 metres is the generally accepted standard between facing habitable room windows. However, in this case, the rear elevation of the proposed dwelling would be devoid of habitable room windows. It is also pertinent that the orientation between the two dwellings would be skewed by 45 degrees such that any direct over looking into the rear windows of No 9 from the new dwelling would be limited and not at a level to cause demonstrable harm.
-

APPENDIX A

Appeal Decision APP/V2255/W/16/3165376

7. I am however less satisfied with the potential overlooking from No 9 to future occupiers of the dwelling. There are habitable room windows at first floor level in the rear of No 9. One of these, a dormer window, would occupy an elevated position facing the small rear garden of the new dwelling. A 45-degree splay line drawn from this window would encompass the majority of the outdoor amenity space to the dwelling. The window would be particularly apparent to future occupiers where it would loom just beyond the shared boundary. Its elevated position would compound the perception of future occupiers being under surveillance.
8. Whilst I accept that a degree of overlooking is inevitable given the site's context within a built-up residential area, I am not persuaded on the evidence before me that this could reasonably be described as typical in this case. I have considered the appellant's view that the harm could be mitigated by landscaping. However, there is nothing before me to demonstrate what this might look like including the height necessary to provide the screening. In any event, this would take a number of years to mature to any reasonable height and in the meantime the occupiers of the dwelling would have to endure unacceptable living conditions.
9. I therefore conclude that the development would cause unacceptable harm to the living conditions of future occupiers. It would thus conflict with Policy E1 of the LP. Although the Council has cited Policy E19 in its refusal reasoning, this is concerned with high quality design and distinctiveness as opposed to living conditions and I cannot find any conflict with the 12 criteria listed under that policy.

Conclusion

10. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector



2.2 REFERENCE NO - 17/505484/FULL			
APPLICATION PROPOSAL Internal alterations including structural work and the erection of a front extension to increase living accommodation, relocation of doors and windows and a new front porch canopy. (Part retrospective for conversion of garage to habitable room)			
ADDRESS 2A Seathorpe Avenue, Minster-on-Sea, Sheerness, Kent ME12 2HU			
RECOMMENDATION – Approve SUBJECT TO : Outstanding representations (closing date 04/12/2017)			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal would not give rise to unacceptable harm to residential or visual amenity, or result in a loss of parking due to the inadequate size of the garage.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection			
WARD Minster Cliffs	PARISH/TOWN COUNCIL Minster-On-Sea	APPLICANT Ms Arnone AGENT Mr Williams	
DECISION DUE DATE 15/12/17	PUBLICITY EXPIRY DATE 04/12/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/02/0362	Detached dwelling	Approved	24 May 2002
Conditions (3) and (4) restricted the use of the garage and the parking area respectively.			

1.0 DESCRIPTION OF SITE

- 1.01 2A Seathorpe Avenue is a modern three bedroom detached house situated within the built up area boundary. It is set back from the highway with a driveway leading to an integral garage, a grassed area to the front and a garden to the rear extending to the northern side of the property.
- 1.02 The frontage of the property is screened by fencing to the south west along the common boundary with 30 Wards Hill Road and hedging to the north east along the common boundary with 2 Seathorpe Avenue.
- 1.03 The street scene here is mixed, with a variation of detached / semi-detached, bungalows, chalet bungalows and houses.

2.0 PROPOSAL

- 2.01 The application seeks planning permission for internal alterations including structural work and the erection of a front extension (across part of the existing frontage) to increase living accommodation, relocation of doors and windows and a new front porch canopy. The application also seeks retrospective planning permission for the conversion of the garage to habitable room.

- 2.02 The front extension would project 0.9m from the front elevation, it would be 4.2m wide and 2.3m to the eaves. The brickwork would be red with yellow features, with brown concrete roof tiles to match the existing materials.
- 2.03 The new front porch canopy would project by 0.8m and it would have a maximum height of 3.2m, with brown concrete tiles to match the existing materials.
- 2.04 The position of the front door will be centralised beneath the new front porch canopy, with a window either side. The garage door will be removed and replaced with a window. The windows and door will be UPVC to match those of the existing property. The existing driveway to the front of the garage will remain, providing off-street parking.
- 2.05 This application also seeks retrospective planning permission for the conversion of the garage to additional living accommodation with associated internal alterations. The rear of the garage has already been converted into a dining room.

3.0 PLANNING CONSTRAINTS

- 3.01 None.

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) and The National Planning Practice Guidance (NPPG) encourages small scale development subject to design and amenity considerations.
- 4.02 The Swale Borough Local Plan “Bearing Fruits 2031” (adopted 2017): Policies CP4 (good design), DM7 (parking), DM14 (general development criteria) and DM16 (alterations and extensions) are relevant.
- 4.03 Supplementary Planning Guidance (SPG): The Council’s adopted Supplementary Planning Guidance entitled “Designing and Extension” is also relevant, and remains a material consideration having been through a formal review and adoption process.
- 4.04 Kent Vehicle Parking Standards (July 2006) and the Kent Design Guide Review: Interim Guidance Note 3 - Residential Parking, which recommends that a minimum of 1.5 car parking spaces should be provided for a 3 bedroom house within this suburban area.

5.0 LOCAL REPRESENTATIONS

- 5.1 None received.
- 5.2 The consultation period expires on 4 December 2017 and I will update Members at the Committee meeting.

6.0 CONSULTATIONS

- 6.1 Minster-on-Sea Parish Council objects “on the grounds of inadequate parking and its concerns that the plans suggest that, prior to this application, the garage had already been converted into habitable accommodation leading to the current situation of inadequate parking provision”.

- 6.2 The Parish Council were re-consulted following the amendment to the proposal description to include the retrospective conversion of the garage to habitable room. Minster-on-Sea Parish Council re-iterated their concerns on 21st November 2017, stating that their “objection dated 3rd November 2017 stands on the grounds of the continued inadequate parking provision”.

7.0 BACKGROUND PAPERS AND PLANS

- 7.1 Application papers and drawings referring to application reference 17/505484/FULL.
- 7.2 Planning permission SW/02/0362 is also relevant because conditions (3) and (4) restrict the use of the garage and the parking area respectively. Condition (3) states:

“The garage hereby permitted shall be used only for the parking of a private motor car or cars or for uses ordinarily incidental to the enjoyment of the occupiers of the dwelling house and no development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 or not, shall be carried out on the site, in such a manner or in such a position as to preclude vehicular access to the garage”.

Condition (4) states:

“The area allocated for parking on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted”.

8.0 APPRAISAL

Principle of Development

- 8.01 The property lies within the built up area where the principle of development is acceptable subject to amenity and other relevant policy considerations. The main considerations here are the impact of the proposal upon the residential and visual amenity of the area, and the impact upon residential parking.

Visual Impact

- 8.02 The front extension will project 0.9m, following the existing building line of the front gable. The new front porch canopy would have a projection of 0.8m. The Council's adopted Supplementary Planning Guidance typically allows for a front projection of 1.2m. The materials will match those of the existing property which is acceptable. The property is aligned at an angle to the road which again reduces the overall impact of the proposal on the streetscene. Given the above, the proposal would not be significantly harmful to visual amenity, in my opinion.

Residential Amenity

- 8.03 The front extension and canopy are of an appropriate scale and design and will have limited impact upon residential amenity, in my opinion. Screening to the front of the property is afforded by hedging to the north east boundary with 2 Seathorpe Avenue and by fencing to the south west boundary with 30 Wards Hill Road.

Highways

- 8.04 The rear part of the existing garage has already been partly converted to living accommodation. This application seeks to regularise this change of use and to fully convert the entire garage into living accommodation. The use of the garage is controlled by condition (3) of planning permission SW/02/0362, which prevents its conversion without the grant of planning permission.
- 8.05 I note the Parish Council's objections in regards to inadequate parking provision. The existing garage measures 2.5m internally, which is below the 3.6m minimum now considered acceptable for parking of a car in the Kent Vehicle Parking Standards. As the garage has not been used as a residential parking space, and is of a size which prevents it being used as such, I consider that there will not be a practical reduction in the parking provision at this property. The property benefits from one off street parking space on the driveway. The property has three bedrooms, and as such the requirement is for 1.5 off street spaces. However, it would be difficult to successfully defend a refusal of planning permission here on the basis that the proposal would give rise to an increase in on street parking, as it is clear that the garage, even prior to its unauthorised conversion, was of insufficient size to accommodate a vehicle.
- 8.06 Given the above, the development would result in no change to the current parking provision, and as such I consider that the proposal would not be significantly harmful to visual amenity in this regard.

Landscaping

- 8.07 I do not consider that any additional planting or landscaping would be required at the site to mitigate the impacts of this proposal.

9.0 CONCLUSION

- 9.01 This is an application for internal alterations including structural work and the erection of a front extension to increase living accommodation, relocation of doors and windows and a new front porch canopy. This application also seeks retrospective planning permission for the conversion of the garage to habitable room.
- 9.02 In my opinion, the development would not give rise to any serious amenity concerns or significantly harm the character or appearance of either the property or the wider area. Due to the narrow width of the existing garage being unsuitable for the parking of a modern vehicle and that the garage is not being used at present for the parking of a vehicle, I recommend that planning permission should be granted.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

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

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

- (2) The development hereby approved shall be carried out in accordance with drawing no. 17.12.02A.

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

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

Reason: In the interests of visual amenity.

Council's approach to the application

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

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the applicant was advised to amend the proposal description to include the retrospective conversion of the garage to habitable room.

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.



2.3 REFERENCE NO - 17/505160/NMAMD		
APPLICATION PROPOSAL Non Material Amendment Being to Change Windows in the Kitchen and Dining Room from Bi-Folding to French Windows Subject to 15/509116/FULL		
ADDRESS 13 Preston Park Faversham Kent ME13 8LH		
RECOMMENDATION - Approve		
REASON FOR REFERRAL TO COMMITTEE Applicant is a Borough Councillor		
WARD Watling	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Mr Nigel Kay AGENT
DECISION DUE DATE 02/11/17	PUBLICITY EXPIRY DATE 27/10/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
App No	Proposal	
15/509116/FULL	Single storey front extension and conversion of existing garage. Insertion of new windows to both side elevations and new windows/doors to the rear - APPROVED	

1.0 DESCRIPTION OF SITE

1.01 13 Preston Park is a modern detached property, situated within the built up area of Faversham. There is a blocked paved area to the front of the property providing off road parking for several cars, and a small grassed area. The rear garden is enclosed by an attractive brick wall which runs along the rear of the properties of Preston Park, which border the public footpath, giving pedestrian access between Preston Park and Canterbury Road.

1.02 In December 2015 planning permission as granted for alterations, including bi-folding rear doors.

2.0 PROPOSAL

2.01 This application seeks confirmation that instead of the the bi-folding windows originally approved in the kitchen and dining room can French windows. can be considered as a non-material amendment to the approval.

2.02 The proposed windows will be the same height and width as was approved under 15/509116/FULL. However, the new windows will now be made of white UPVC as opposed to Hybrid timber with external white coated aluminium as approved.

3.0 PLANNING CONSTRAINTS

3.01 None

4.0 POLICY AND OTHER CONSIDERATIONS

4.01 None

5.0 LOCAL REPRESENTATIONS

5.01 One letter of support has been received from a local resident.

6.0 CONSULTATIONS

6.01 None

7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers and drawings relating to planning reference 17/505160/NMAMD

8.0 APPRAISAL

8.01 The main consideration for Members to determine in this case is whether the amendments constitute a non-material revision to a planning permission which would not take it outside the scope of the original permission.

8.02 S96A of the Town and County Planning Act 1990 states: ‘In deciding whether a change is material, a Local Planning Authority must have regard to the effect of the change, together with previous changes made under this section, on the planning permission as originally granted.’ The Government guidance on non material amendments does not define what changes may be treated as non material.

8.03 In this case, the proposed windows will be of the same size and in the same position as approved under 15/509116/FULL. The proposed French windows will be constructed of white UPVC which will match the existing windows on the property. I consider the new windows not to have any detrimental impact on the visual appearance of the building and that it would remain in keeping with the surrounding area.

8.04 I note that there were no objections from neighbours to the previously approved application and as this seeks a design which would have limited impact on neighbours, I do not consider that the amendment would give rise to additional harm to the amenities of the neighbouring property.

9.0 CONCLUSION

9.01 Having regards to the above it is considered that the proposal is acceptable as a non-material amendment to the above permission and that a revised application is not required.

10.0 RECOMMENDATION – GRANT

REASON

(1) Under the provisions of Sec. 96A of the Town and Country Planning Act 1990, it is considered that the amendments as shown on the document received 4 October 2017 constitute non-material amendments to planning permission 15/509116/FULL.

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 - 17/504807/FULL			
APPLICATION PROPOSAL Erection of single storey rear extension and external alterations to rear fenestration.			
ADDRESS 3 Oak Cottages Perry Wood Selling Faversham Kent ME13 9SE			
RECOMMENDATION: Conditional Approval			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal is in accordance with Local Policy and Supplementary Guidance. The works proposed are unlikely to give rise to unacceptable harm to residential or visual amenities.			
REASON FOR REFERRAL TO COMMITTEE Objection from Parish Council			
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Selling	APPLICANT Mr & Mrs Niall & Paula Leyden AGENT Spacemaker Architects	
DECISION DUE DATE 21/11/17	PUBLICITY EXPIRY DATE 20/10/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/12/0995	Lawful Development Certificate for use of land within the curtilage of the dwelling for the stationing of a mobile home to be occupied ancillary to the main house. (Proposed)	Certificate Granted	28 August 2012

1.0 DESCRIPTION OF SITE

- 1.01 The proposal site is a traditionally designed two storey end terrace dwelling in Perry Wood. The site lies along a rural lane with a wide set back from the building frontage to the main carriageway. Access is provided from the main road to the property via a private lane. The existing building is bare brick faced on the front elevation and the rear walls have been painted with a creamy white colour.
- 1.02 The existing dwelling has been developed in the past to create a part two / part single side and rear extensions. As originally purchased and shown on plans, part the proposal site (Number 3) is set within the neighbouring terrace at ground floor level. This odd arrangement however has no impact on the external boundary arrangement. The existing boundary treatment is made up of part brick and part wooden fencing panels.
- 1.03 The area is in the countryside and part of the designated Kent Downs Area of Outstanding Natural Beauty. The site is however not in a conservation area and the building is not listed. The immediate surroundings are predominantly rural with groups of residential properties scattered across a wide area.

2.0 PROPOSAL

- 2.01 Planning permission is sought for the erection of a modern style single storey rear extension. The proposed extension would have a width measuring 5.8 metres, a maximum depth of 3.3 metres and a mono-pitched roof with a height of 2.5 metres at the lower eaves part and 3.0 metres at the highest point. The extension is to provide a dining area.
- 2.02 Three roof windows are proposed, a standard door is proposed to open rearwards, and to the east overlooking the side garden, aluminium bi-fold doors are proposed. The extension will be set back by 0.5m from the common boundary with no. 2 Oaks Cottage.
- 2.03 The extension would be clad in horizontal chestnut feather edged wood panels with dark grey aluminium under a zinc roof. There will be a canopied area supported by posts along the eastern and southern part of the built form.

3.0 PLANNING CONSTRAINTS

Ancient Woodland

Area of Outstanding Natural Beauty KENT DOWNS

Potential Archaeological Importance

Tree Preservation Order Polygon MBC_SBC Reference: 8093/TPO

Description: Woodland to the south east and east of Oak Cottages, Perry W

Tree Preservation Order Polygon MBC_SBC Reference: 8095/TPO

Description: Woodland to the south east and east of Oak Cottages, Perry W

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (2012) and National Planning Practice Guidance.
- Chapter 7: Requiring good design
 - Chapter 11: Conserving and enhancing the natural environment
- 4.02 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017
- Policy CP 4 Requiring good design
 - DM11 Extensions to, and replacement of, dwellings in the rural area
 - Policy DM 14 General development criteria
 - Policy DM 16 Alterations and extension
 - Policy DM 24 Conserving and enhancing valued landscapes
- 4.03 Supplementary Planning Guidance: ‘Designing an Extension – ‘A Guide for Householders’

5.0 LOCAL REPRESENTATIONS

- 5.01 None received

6.0 CONSULTATIONS

- 6.01 Selling Parish Council has raised objections to the proposal. Councillor's views are stated below:

'The above application was discussed at our Selling Parish Council meeting last night and the councillors were of the opinion that the materials would be out of keeping with the design of the area and the proposed design looks odd.'

7.0 APPRAISAL

Principle of Development

- 7.01 The development is to provide extra habitable space to the existing dwelling house. The proposed extension is to remain ancillary to the main dwelling and the use of the host dwelling is not changing. For this reason, although the site lies outside of a built up area boundary the proposal is considered acceptable in land use terms subject to it being of a modest scale.

Visual Impact

- 7.02 Paragraph 3.0 of local supplementary guidance 'Designing an Extension – 'A Guide for Householders' notes that extensions should respect or reflect the character and appearance of the existing building. On this basis, the Parish Council has expressed concerns relating to the choice of materials and the design of the proposed extension. Paragraphs 4.1 and 4.2 reinforce the design aspect and advise that in older properties, features worth copying should be included and retained.
- 7.03 Plans for the proposal have been annotated to show timber cladding and a canopied area outside of the extension. Whilst the materials and style proposed may not be directly in keeping with the existing, it cannot be argued they are unsympathetic. As detailed above, the extension would be clad in wood panels with aluminium doors and windows. Wood is considered traditional material whereas aluminium is modern. In the view of Officers, the material choice would contrast and complement the existing building. Moreover the chestnut cladding will reflect the surrounding woodland and anchor the extension to its location.
- 7.04 The site is the end building in a row of three dwellings located in a very secluded area. The proposed extension would be contained on the rear elevation and would be just 0.5 metres higher than the existing boundary wall. Views of the proposed extension would be limited to residents of the three immediate neighbouring dwelling from their rear gardens. There will be no direct views from any public vantage points. For this reason and on the basis that the site is not a listed building; it would be unjustified to refuse the application solely based on material choice and design. The material choice in this location is therefore considered appropriate.
- 7.05 In design terms, I consider that the proposed rear extension is an acceptable way of extending this property on account of its general compliance with policy DM 14 of the adopted local plan and the guidance as outlined in the SPG – 'Designing an Extension – A Guide for Householders.'

Residential Amenity

- 7.06 The Guidance document advice that development should not unacceptably harm the amenity of adjoining residents with regard to overlooking, loss of light and creation of

a sense of enclosure. In terms of privacy and overlooking, the proposed extension does not include any windows along the boundary with no. 2. In this instance the proposal would not result in a loss of privacy to the occupants of the neighbouring property.

- 7.07 It is noted that the proposed extension, with an overall depth of 3.3 metres would exceed the 3 m guidance depth for extensions to terraced houses as set out in the local supplementary guidance 'Designing an Extension – 'A Guide for Householders'. The guidance limit is so stated to prevent undue impact on neighbouring residents. Paragraph 5.7 of the same document however advice that leaving a gap to the boundary with your neighbour may offset the 3 metres requirement. For this reason, given that the flank wall of the extension would be set back from the common boundary by half a metre, some flexibility can be applied in this case.
- 7.08 In terms of light, the extension is low in terms of its height, bulk and scale. This, in combination with the siting and southern orientation of adjoining houses, persuades me that this is not a development that warrants refusal of [planning permission. The potential impact of the proposed extension would to my mind be acceptable.

Scale

- 7.09 Whist this property ahs previously been extended the current proposal is of very limited impact and, even taken together with the previous extension, would not result in an unacceptable impact on the character of the countryside.

Highways

- 7.10 Owing to the modest scale of the proposed extension and the siting; there will be no highways implications.

8.0 CONCLUSION

- 8.01 The proposal to extend the property to the rear to create habitable living space is considered to be acceptable. The proposed extension exhibits minimal departure from relevant Local Plan policies and SPG guidance. Detailed analysis of the development however indicates that the development would have an acceptable relationship with neighbouring properties and minimal impact on the visual amenities of the AONB.
- 8.02 On balance, it is considered the development should be granted planning permission as there are no valid material reasons to withhold consent.

11.0 RECOMMENDATION – GRANT Subject to the following condition

CONDITION

- (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 a mended by the Planning and Compulsory Purchase Act 2004.

The Council's approach to this application:

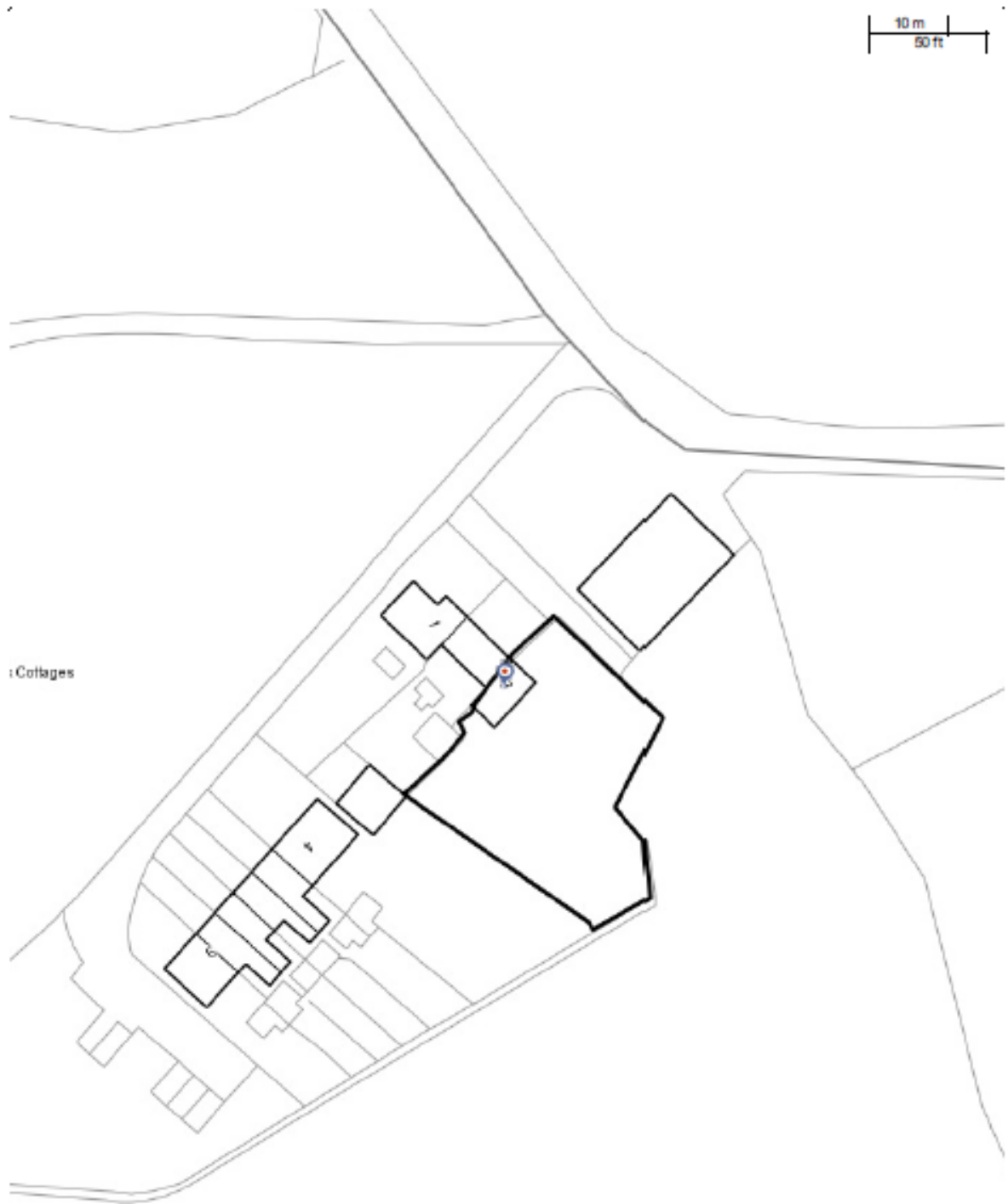
In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

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

In this instance, the application was acceptable as submitted and no further information was required. The application was also considered by the Planning Committee where the applicant / agent had the opportunity to speak 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.



2.4 3 Oak Cottages, Perry Wood, Selling ME13 9SE
Scale: 1:700



2.5 REFERENCE NO - 17/505562/FULL			
APPLICATION PROPOSAL Demolition of existing shed and construction of annex to dwelling house as amended by drawing no's. NR1760.01A, NR1760.05A, NR1760.06A, and NR1760.07A received 16 November 2017			
ADDRESS Gladstone House 60 Newton Road Faversham Kent ME13 8DZ			
RECOMMENDATION – Approve SUBJECT TO: outstanding representations (closing date 8 December 2017)			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL Proposed development would preserve or enhance the character of the conservation area, and would not give rise to unacceptable harm to residential amenity.			
REASON FOR REFERRAL TO COMMITTEE Town Council objection			
WARD Abbey	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Mrs Mary Mackay AGENT Wyndham Jordan Architects	
DECISION DUE DATE 29/12/17	PUBLICITY EXPIRY DATE 08/12/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/507024/FULL	Demolition of existing shed and construction of new two storey 2 bedroom dwelling house.	Refused	18.11.16

1.0 DESCRIPTION OF SITE

- 1.01 The application site is within the domestic garden of 60 Newton Road, Faversham which is a single dwellinghouse offering bed and breakfast accommodation for tourists. Currently located on the application area is a shed. The site lies within the designated Faversham conservation area and within the built up area of Faversham.
- 1.02 The proposed annexe would be located to the rear of 60 Newton Road where this face the rear of Preston Street church, at which point the former church hall has been converted in to small dwellings and flats. Newton Road at this end features predominately large residential properties with narrow long gardens, some with parking in the rear of those gardens.

2.0 PROPOSAL

- 2.01 This application as first submitted sought to demolish the existing shed and construct a new building with a rather steep pitched roof, to be used as an annexe to the dwelling. The proposal has since been modified to reduce the roof pitch/height and to remove the rooflights originally proposed within the front facing roofslope.

- 2.02 The existing shed has a corrugated cement flat roof and rendered front panel with timber double doors. The rear west elevation and north side elevation of the building are constructed using concrete blocks at low level with a glazed timber frame above. The boundary garden wall comprising of yellow stock bricks flanks the south side.
- 2.03 It is proposed to replace the shed with a larger building to be used as an annexe to the main house. It would have one bedroom with a shower room and a lounge. The annexe will be accessible from the rear garden to 60 Newton Road and also via a side gate. The principal entrance will be the side door providing access into the lounge. The annexe will provide additional accommodation for family members.
- 2.04 The new building is of a traditional style incorporating features that are present on other properties located within the conservation area. These include arched window heads and projecting plinth base courses.
- 2.05 Materials proposed are:
- Yellow stock brickwork with pale yellow brick arches
 - Slate roof
 - Timber fascias and soffits
 - Timber double glazed windows and doors
 - Gutters and downpipes to be cast iron
- 2.06 The proposed annexe as first submitted would have had a 45° pitched roof and two rooflights within the east facing roofslope. Amended drawings have been received after discussions with the agent regarding concerns about the steepness of the pitched roof on the character of the area and potential overlooking from the rooflights on neighbouring properties. The amended drawings have addressed my concerns over these issues. The roof pitch has been lowered to 35° and the rooflights have been removed.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Car parking spaces (inc. disabled)	0	0	
Approximate Eaves Height (m)	2.1m	2.4m	+0.3m
Approximate Depth (m)	4.1m	4.48m	+0.38
Approximate Width (m)	4.5m	6.7m	+2.2
Net Floor Area	18.45	30	+11.55

4.0 PLANNING CONSTRAINTS

Potential Archaeological Importance

Conservation Area Faversham

5.0 POLICY AND OTHER CONSIDERATIONS

Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies CP8, DM7, DM14, DM16, and DM33

Supplementary Planning Documents: Supplementary Planning Guidance entitled “*Designing an Extension – A Guide for Householders*”.

6.0 LOCAL REPRESENTATIONS

6.01 Three letters of objection have been received from local residents. A summary of their comments is as follows:

- Parking provision problems in the local area
- Inappropriate development in the conservation area
- Precedent for unsuitable development would be set
- Loss of open aspects of the rear garden area
- Proposed high roofline (5.1m) will dominate the garden areas
- Covenants restricts the development of the back garden unless it is necessary for outhouses
- The proposal would overshadow and overlook neighbouring properties
- The development is not an annexe, it is a free-standing accommodation block at the end of the garden

6.02 Three local residents have responded to the amended drawings stating that their objections remain unchanged. A summary of their comments is as follows:

- the reduction in roof height remains over twice the height of the current party wall
- the amendments do not address objections raised by the Town Council and neighbours
- the existing shed is in fact a garage, therefore its removal will increase parking pressure
- the reduced height in comparison with that of the previous application does not make it any more acceptable
- this application is clearly intended to raise the profitability of the B&B at the expense of neighbours

6.03 The deadline for comments is 8 December 2017. This report is subject to the receipt of additional comments which will be reported at the meeting.

7.0 CONSULTATIONS

7.01 Faversham Town Council object for the following reasons:

- This is back land development
- Not appropriate in the Conservation Area
- No parking provision
- Loss of openness
- Loss of established rear gardens
- Would set a precedent

8.0 BACKGROUND PAPERS AND PLANS

8.01 Application papers and drawings referring to application reference 17/505562/FULL

9.0 APPRAISAL

9.01 The main issues to be considered in this application are the impact of the proposed annexe on the character and appearance of the building, the impact on the character and appearance of the conservation area and the impact on the residential amenity of neighbouring properties.

Visual Impact/Impact on Conservation Area

- 9.02 I consider the key issues in this case are whether it meets the aims and objectives of policy DM33 of Bearing Fruits 2031: SBLP 2017 in preventing development that fails to preserve or enhance the special character and appearance of the conservation area. It is also the statutory duty of the Council to be consider whether the special character and appearance of the conservation area is preserved or enhanced. In November 2016, a new two storey dwelling was refused at this property (16/507024/FULL) on the grounds that it would represent harmful development and thus fail to preserve or enhance the character or appearance of the Faversham conservation area.
- 9.03 This application has sought to address this issue. The proposed building is modest in scale and height providing single storey ancillary annexe accommodation. I consider the proposed development now has considerable merit and will enhance the character of the street scene and the visual amenities of the area. As a designated conservation area, it is clearly a heritage asset. Since there is a statutory duty on the Council to ensure that changes to heritage assets are not harmful it has been essential that the proposal is not of any significant harm. I consider that the building as now proposed will be of a significant improvement over the character and appearance of the existing building and is sensitively designed as to retain the spacious character of the rear of Newton Road at this location.
- 9.04 The proposed siting of the new building is on the same position as the existing shed, in the south west corner of the rear garden to 60 Newton Road. I note local concern over inappropriate development in the conservation area but, whilst the proposal is taller than the existing shed, it is acceptable in my opinion and a distinct improvement in the appearance of the site. The ridge height is now lower and as such will not result in it being a dominant feature of the area. In my opinion, the proposed building would fit in with its surroundings and would not be harmful to the attractive spacious character of the area.

Use as an annexe

- 9.05 The proposed building contains a simply a bedroom, shower room and lounge, accessible from the rear garden to the host building and would constitute an annexe dependant or ancillary to the main house. I consider that the amount of accommodation being proposed is at such a level that it will be dependent on the main dwelling and as such cannot be used as a separate dwelling in its own right. The proposed building is essentially a bedroom with an en-suite.
- 9.06 I note local concerns with regard to the use of the building as a separate dwelling. I consider that the use of this for an annexe is acceptable and recommend imposing condition (3) below which restricts the use of the building to purposes ancillary and or/incidental to the use of the dwelling.
- 9.07 Although granting permission for this application could encourage others to do the same, I do not consider this to be a reason for refusal. Each application should be considered on its own merits.

Residential Amenity

- 9.08 There is no identifiable harm regarding the impact of the proposal upon the amenity of the residents of the adjacent dwellings, no. 58 and 62. There would be a separation distance of approximately 15m between the annexe and the rear elevation of

neighbouring properties. Given this intervening distance and that the building will be single storey with a low pitched roof, I consider that the proposal would not give rise to any serious overshadowing or loss of light to adjoining properties. Neither do I consider there to be any overlooking issues. The proposed rooflights have been removed from the drawings, therefore harmful overlooking into the rear garden of neighbouring properties will not be an issue.

Highways

- 9.09 The property does not have any off-road parking spaces. Whilst it is arguable that the existing shed could potentially house a car, it is small and not restricted to garage use, so the proposal will not remove any dedicated parking provision. I do not consider that this issue can be a reason for refusal here. I am mindful that the site is in close proximity to the town centre and accessible to public transport.

Other Matters

- 9.10 I note local concern in regards to restrictive covenants; however this is a private issue between neighbours and is therefore a non-material planning consideration.

10.0 CONCLUSION

- 10.01 I therefore consider that the proposal is acceptable in terms of its impact upon the character and appearance of the immediate vicinity and the property, and the conservation area, fulfilling the aim of preserving the character of the area and thus the heritage asset. I therefore recommend, subject to conditions, that permission be granted.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

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

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

- (2) The development hereby approved, including the specification of materials to be used in the construction of the annexe, shall be carried out in accordance with the following approved drawings:

NR1760.01A, NR1760.05A, NR1760.06A and NR1760.07A received 16 November 2017

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

- (3) The building hereby permitted shall not be used at any time other than for purposes ancillary and/or incidental to the use of the property known as “Gladstone House, 60 Newton Road” as a single dwellinghouse.

Reason: As its use as a separate unit of accommodation would be contrary to the provisions of the development plan for the area.

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

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of minor changes required to the application and these were agreed.

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 Gladstone House, 60 Newton Road, Faversham ME13 8DZ
Scale: 1:700



2.6 REFERENCE NO - 17/504375/FULL		
APPLICATION PROPOSAL Demolition of timber garage and shed and replacement with oak framed garage		
ADDRESS Ye Olde Timbers Vicarage Lane Selling Kent ME13 9RD		
RECOMMENDATION - Approve		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Selling	APPLICANT Mr Graham Whinney AGENT
DECISION DUE DATE 27/11/17	PUBLICITY EXPIRY DATE 13/11/17	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
App No	Proposal	Decision
SW/90/0302	Partially demolish existing conservatory and replace with new	Granted

1.0 DESCRIPTION OF SITE

- 1.01 Ye Olde Timbers is a Grade II listed timber framed building with brick and render elevations under a Kent peg tile roof. It is located within the Selling conservation area and within the Kent Downs Area of Outstanding Natural Beauty. The property is situated at the end of a no through narrow lane leading to farmland. A public footpath runs alongside the eastern boundary from Vicarage Lane to Featherbed Lane.
- 1.02 The property enjoys a spacious plot and is attached to Primrose Cottage. Across the lane is Church House, a Grade II listed building and St Marys Church, a Grade I listed building. Old Oast Cottage, a Grade II listed building is located to the south.
- 1.03 The existing modern detached garage, constructed of a timber frame with cedar cladding, felt roof and timber framed windows and doors is positioned to the rear of the property, behind timber gates and a gravel driveway. A similar existing shed is behind the garage.

2.0 PROPOSAL

- 2.01 The application is seeking permission to demolish the timber garage and shed and replace them with an oak framed garage.
- 2.02 The existing timber framed garage, constructed around 1965, has a shallow pitched felt roof, plastic gutters and downpipes, and is in a state of disrepair. The garage doorway measures approx. 2.0m wide and is of insufficient width to park a car. The proposed oak framed garage with a dual pitched natural slate roof would be located in the same position as the existing garage. The green oak frame would be constructed on top of 3 courses of red brickwork with green oak feather edge cladding and cast iron gutters and downpipes. It would be open fronted (2.77m wide) and slightly bigger with a higher pitch (30°).The new garage will provide parking and storage for the owner’s personal use.

- 2.03 No replacement is proposed for the garden shed which is to be removed..
- 2.04 The application sought pre application advice prior to submitting the application and was advised that the proposal would be very likely to receive Officer support. Both existing buildings were constructed after 1948 and it was clear from my site visit that both were modern structures therefore not considered curtilage listed buildings.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Approximate Ridge Height (m)	2.35m	3.25m	+0.9
Approximate Eaves Height (m)	1.8m	2.02m/1.55m	
Approximate Depth (m)	5.5m	7.4m	+1.9
Approximate Width (m)	3.05m	4.3m	+1.25
No. of Storeys	1	1	0
Parking Spaces	1	1	0

4.0 PLANNING CONSTRAINTS

Area of Outstanding Natural Beauty KENT DOWNS

Conservation Area Selling

Listed Buildings MBC and SBC Ref Number: 871/SW

Description: G II YE OLDE TIMBERS, VICARAGE LANE, SELLING, FAVERSHAM, ME1

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies DM7, DM11, DM14, DM16, DM24, DM32 and DM33
- 5.02 Supplementary Planning Documents: Planning Guidance entitled ‘*Listed Building*’ and ‘*Conservation Areas*’.

6.0 LOCAL REPRESENTATIONS

- 6.01 I have not received any letters supporting or objecting to the application.

7.0 CONSULTATIONS

- 7.01 Selling Parish Council commented that the slated roof might be out of character with the kent tile pegs on surrounding buildings.
- 7.02 KCC Public Rights of Way raised no objections. The public footpath ZR645 passes Vicarage Lane to the entrance of the proposed site. As the application is for the erection of a detached garage away from the public right of way, there is unlikely to be a significant impact on this route.

8.0 BACKGROUND PAPERS AND PLANS

Application papers and drawings referring to application reference 17/504375/FULL

9.0 APPRAISAL

Principle of Development

- 9.01 The main considerations in determination of this planning application are the impact of the proposed timber garage on the character and appearance of the listed building and the countryside, the impact on the character of the conservation area and setting of the adjacent listed buildings.

Impact on the character and appearance of the street scene and visual amenity

- 9.02 The existing garage has fallen into a state of disrepair and the proposed works will be a considerable improvement. In my view, the scale of the proposed garage is acceptable, covering almost the same footprint as the existing garage but will enhance the character of the street scene and visual amenities of the area.

Impact on the character and appearance of the conservation area and setting of the listed building

- 9.03 The proposed garage, located in a conservation area, adjacent to and opposite listed buildings, and surrounded by countryside contributes significantly to its setting. As a designated conservation area, it is clearly a heritage asset. Since there is a statutory duty on the Council to ensure that changes to heritage assets are not harmful it has been essential that the proposal is not of any significant harm. I consider that the garage proposed will be a significant improvement over the garaging provisions for the host building.
- 9.04 The proposed siting of the new garage is behind the property it is to serve and is on the same position as the existing garage, hidden from the view of the street. The roof profile is specifically kept shallow with its proposed finish in natural slates. I consider that the design of the new structure is acceptable and appropriate to the character of the existing historic context. If the new garage roof was to be constructed with Kent peg tiles, it would clearly have to have a steeper pitch to the roof (at least 40°) which would result in the garage being taller and more prominent. I consider therefore that the works will not adversely affect the character of the listed building or the conservation area/immediate surroundings of the listed buildings opposite.

Residential Amenity

- 9.05 The proposed garage would be located close to the shared boundary with Charmes Cottage. The garage is of a modest size and height and is unlikely to have a detrimental impact on this neighbouring property.
- 9.06 There is no identifiable harm regarding the impact of the proposal upon the amenity of the residents of the adjoining dwelling, Primrose Cottage.

Highways

- 9.07 The garage is appropriately designed and meets the minimum required width for parking vehicles, therefore in my view there would be no resulting harm to highway safety and convenience.

10.0 CONCLUSION

10.01 In considering this application, the size and design is considered sympathetic with the character of the listed building and the surrounding landscape.

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS

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

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

(2) The development hereby approved, including the specification of materials to be used in the construction of the garage, shall be carried out in accordance with the following approved drawings:

Proposed oak framed timber garage to replace existing timber garage and timber shed: drawing no. GWG.2

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

Council's approach to the application

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

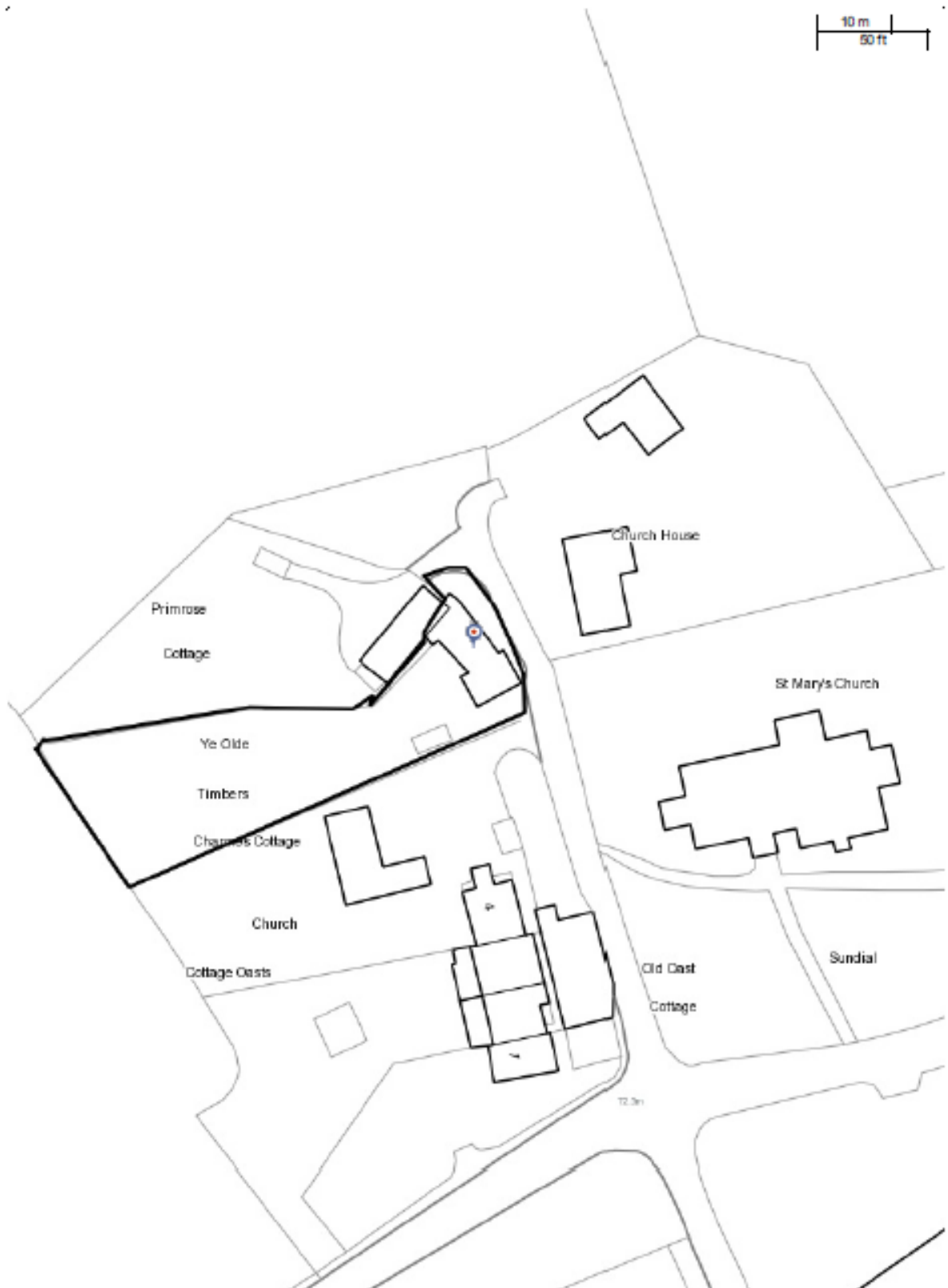
- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was acceptable as submitted and no further assistance was required

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

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



2.6 Ye Olde Timbers, Vicarage Lane, Selling ME13 9RD
Scale: 1:700



2.7 REFERENCE NO - 17/505078/FULL			
APPLICATION PROPOSAL Add privacy screening to east and west sides of existing first floor parapet to overall height of 1.8m and add access doors within two existing window aperture widths, to create rear balcony.			
ADDRESS Bayshore 84 Scarborough Drive Minster-on-sea Sheerness Kent ME12 2NQ			
RECOMMENDATION GRANT subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION The proposed development would not give rise to significant harm to visual or residential amenity that would justify refusal			
REASON FOR REFERRAL TO COMMITTEE Applicant is a member of staff			
WARD Minster Cliffs	PARISH/TOWN Minster-On-Sea	COUNCIL	APPLICANT Mr Tony Potter AGENT
DECISION DUE DATE 07/12/17	PUBLICITY EXPIRY DATE 10/11/17		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/05/1166	Proposed ground and first floor extensions with new roof structure	Approved	8/2/06

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 84 Scarborough Drive is a large, detached house, located within the built up area of Minster. Originally a bungalow, the extensions and alterations carried out to the property were granted planning permission under reference SW/05/1166 in early 2006.
- 1.02 The property has a single storey rear extension, with a sunken flat roof with pitched roof elements to each side.
- 1.03 In 2006, it became apparent that the development at the site was not proceeding in accordance with the approved plans. Specifically, the openings above the roof to the single storey extensions had been constructed for doors giving access to this roof area, instead of the approved windows.
- 1.04 Following discussions with Officers, the owner agreed to build the openings in accordance with the approved plans, as it was clear that the use of this roof as a balcony would have significantly overlooked the private amenity spaces of the dwellings to either side. Once this had occurred, the Council secured an Article 4 Direction, removing permitted development rights for alterations to these openings, to give the Council control over any future, similar works, to enable an assessment to be made of the impact of the use of the flat roof as a balcony.

- 1.05 As referred to above, the flat roof area, if used as a balcony, without sufficient screening, would give rise to substantial and harmful overlooking of the entire rear gardens of the dwellings either side.

2.0 PROPOSAL

- 2.01 The owner of the property has now applied to replace the existing rear facing windows with doors, and to erect obscuring screens to the east and west sides of the roof, projecting the entire length of the roof, and measuring 1.8 metres high from the finished floor level.
- 2.02 The existing single storey extension projects a total of 5.85 metres to the rear of no.84, although of this, only 4 metres is a flat roof. It projects 12 metres beyond the rear of no.70 Scarborough Drive, lying just under a metre from the boundary with this dwelling, although the flat roof area lies 3 metres from this boundary, projecting 10 metres to the rear. There is a change in levels between the application site and no.70, with the garden at no70 lying appreciably lower than the dwelling at no.84.
- 2.03 The rear extension projects by 7.2 metres beyond the rear of no.86 to the east of the application site, lying 6.6 metres from the boundary, although the flat roof area projects by just over 5 metres to the rear of no.86, lying just over 8 metres from this boundary.

3.0 POLICY AND OTHER CONSIDERATIONS

- 3.01 The following Policies of the adopted Local Plan are relevant:

DM14 – General Development Criteria
DM16 – Alterations and Extensions

- 3.02 The Council's adopted Supplementary Planning Guidance, "Designing an Extension – A Guide for Householders" is pertinent here.

4.0 LOCAL REPRESENTATIONS

- 4.01 Eight representations have been received from four separate addresses, all raising objection, summarised as follows:
- The purpose of the Article 4 direction is to prevent this development and the application should therefore be refused;
 - The screening will give rise to overshadowing;
 - The screening is of insufficient height and will not prevent overlooking of the gardens to either side;
 - The use of the flat roof as a balcony will give rise to noise and disturbance that will harm the amenity of the neighbours;
 - This would amount to a roof terrace rather than a balcony;
 - What if the applicant raises the floor level? This would negate the purpose of the screening;
 - The applicant is taller than the screening proposed and it will therefore be ineffective;
 - The occupier of one of the dwellings to the rear in Southsea Avenue, objects on the basis that the balcony would overlook their daughter's bedroom and result in harmful loss of privacy to them;

5.0 CONSULTATIONS

- 5.01 Minster on Sea Parish Council support the application, commenting as follows:

Minster-on-Sea Parish Council's support is subject to the whole screen being totally opaque and permanent with no gaps to completely obviate the possibility of any overlooking. The Site Plan Section - proposed screening -rear east side first floor suggests otherwise.

6.0 BACKGROUND PAPERS AND PLANS

- 6.01 Application papers, plans and correspondence for application SW/05/1166 and 17/505078/FULL
- 6.02 Article 4 Direction affecting this site.

7.0 APPRAISAL

- 7.01 Members should be clear that the purpose of an Article 4 Direction is not to seek, in perpetuity, to prevent the development it controls. It is to give the Council control over development which would otherwise not require the express grant of planning permission – development which would otherwise be “permitted development”. Contrary to the suggestion of the local residents, it is not therefore the case that the mere presence of the Article 4 direction here requires that planning permission should be refused. It means that the owner of the property must apply for planning permission for the development, which can then be scrutinised by the Council. The decision here must be based on the merits of the development proposed.
- 7.02 The change from windows to doors on the rear elevation is, in itself, unobjectionable. The key issues here are the impact of the development proposed on residential and visual amenity.

Impact on Visual Amenity

- 7.03 The proposed screens would appear somewhat obtrusive from the dwellings either side. The application property sits higher than both dwellings, but particularly more so than no.70 Scarborough Drive to the west. In addition, the rear extension lies closer to this boundary than to that of no.86 to the east.
- 7.04 However – the screens themselves would not be significantly higher than the top of the pitched roof – approximately 0.7 metres in height. I do not consider this to be significant, and whilst I am mindful that this would have some impact on the visual amenities of the neighbours, I do not consider that it would be so severe as to warrant refusal of planning permission. As Members will note, the proposed development lies entirely to the rear of the dwelling, and there would not be a pronounced impact on the character and appearance of the streetscene.
- 7.05 I conclude that the impact of the proposals on visual amenity is acceptable.

Impact on Residential Amenity

- 7.06 I do not consider, given the limited height of the panels above the existing roof, or their location to the north of what is a substantial dwelling, that they would give rise to overshadowing or loss of light.

- 7.07 With regards overlooking, the properties to the rear in Southsea Avenue, lie in excess of 40 metres from the closest part of the proposed balcony area. As such, I do not consider that they would be significantly overlooked.
- 7.08 With regards the comments of the Parish Council, the screening is not shown extending the full length of the roof, as the rearmost part of it is pitched and therefore unusable as a balcony.
- 7.09 The use of the flat roof as a balcony, with the screening proposed, would give views into the rear areas of the neighbours gardens. However – These areas of the gardens are already overlooked by the dwelling at the application site, together with other neighbouring dwellings. As such, there would be no significant increase in overlooking in this regard.
- 7.10 I note the comments of residents in respect of the height of the screening and the height of the applicant. However – the total height of screening proposed is the height of a standard garden fence. It is designed to eliminate casual overlooking and the perception of overlooking.
- 7.11 The issue here is whether the screening should be of such a height that it removes the potential for deliberate and intrusive overlooking. The planning system does not generally take into account matters such as this, and cannot be used in this regard as a means of anticipating the actions of the applicant, particularly where there is no evidence to demonstrate that the applicant wishes to deliberately overlook his neighbours. If a neighbour is determined to overlook the properties next to them, there is little the planning system can do to prevent it, and even if the screening were to be increased in height to 2.5 metres, this would not prevent such an event occurring. In any case, a similar level of overlooking can be achieved simply by looking over one's garden fence. As such, whilst I understand the views of the objectors in this regard, I do not consider it necessary for the screens to be increased in height, nor do I consider this to amount to a reason for refusing planning permission. In my view, the screening proposed is adequate to prevent harmful overlooking into the private gardens of the dwellings either side – nos.70 and 86 Scarborough Drive.
- 7.12 I note the comments made regarding potential noise and disturbance from the use of the balcony. However – such a use is unlikely to give rise to noise levels in excess of what one might expect from a dwelling, and in any case, the screening proposed would provide an amount of acoustic mitigation. A similar level of noise could be generated from the normal use of the garden at the property.
- 7.13 Given the above, I conclude that the use of the balcony with the screening proposed would not give rise to significant harm to residential amenity.

Conditions

- 7.14 I have given consideration to the comments of the Parish Council and the local residents, particularly with regards the extent of the screening and the possibility of alterations to the finished floor level of the flat roof area. In my view, it is necessary to impose conditions to:
- Require the screening to run the entire length of the flat roof area on both sides
 - Prevent any change to the finished floor level of the flat roof;
 - Prevent any further alterations to the pitched roof that might increase the useable area of balcony, which would then not be adequately screened.

- Require the screening to be erected, in full, prior to the first use of the balcony; and
- Require the screening to be retained in perpetuity.

8.0 CONCLUSION

8.01 I have given careful consideration to the potential impact of this proposal on residential and visual amenity, and to the comments and objections of local residents. However – I conclude that the scheme would not, if controlled by the proposed conditions below, give rise to such harm that planning permission should be refused. I therefore recommend approval.

9.0 RECOMMENDATION – GRANT Subject to the following conditions

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

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

- 2) The screening shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3 and shall remain as such in perpetuity.

Reason: In the interests of residential amenity.

- 3) The flat roof area shall not be used as a balcony or sitting out area until the approved screening has been erected in full, running the entire length of the flat roof on both its east and west edges and being a height of 1.8 metres above the level of the flat roof. The screening shall be retained in perpetuity.

Reason: In the interests of residential amenity.

- 4) No alterations to the level or height of the flat roof shall take place, and upon completion no further development of the roof of the rear extension, whether permitted by Classes B and C of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or not, shall take place.

Reason: In the interests of residential amenity.

The Council's approach to this application:

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

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

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

In this instance:

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

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



PLANNING COMMITTEE 7 DECEMBER 2017

PART 5

Report of the Head of Planning

PART 5

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

- **Item 5.1 – 22 Kent Road, Sheerness**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council's decision. This was considered a poorly designed scheme which would have harmed the amenities of the area.

- **Item 5.2 – Cranbrook Farm, Callaways Lane, Newington**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council's decision.

- **Item 5.3 – Land adjoining and rear of Jubilee Fields, Oak Lane, Upchurch**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector acknowledges that the Council has a five-year housing land supply. He agreed that the site is unsuitable for housing, and therefore that the proposal is unacceptable.

- **Item 5.4 – Land adjoining Kaine Farm House, Breach Lane, Upchurch**

APPEAL DISMISSED AND AWARD OF COSTS REFUSED

COMMITTEE REFUSAL

Observations

The Inspector gave very firm support to the new Local Plan, and agreed with the Council on every point. The Inspector did not though award costs to the Council, despite the appellant making a number of contradictory and questionable claims in their appeal particulars.

- **Item 5.5 – Land adjoining Sydney Cottage, Dunkirk Road South, Dunkirk**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council’s decision in the light of adoption of the Local Plan.

- **Item 5.6 – 1 Broomhill Cottages, Hanslette Lane, Ospringe**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council’s decision in the light of adoption of the Local Plan.

- **Item 5.7 – Land on Corner of Range Road, Eastchurch**

APPEAL DISMISSED

COMMITTEE REFUSAL – AGAINST OFFICER RECOMMENDATION

Observations

Full support for the Council’s decision in the light of adoption of the Local Plan.

- **Item 5.8 – Orchard Way, Eastchurch**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council's decision in the light of adoption of the Local Plan.

- **Item 5.9 – Land at Swale Way, East Hall Farm, East Hall Lane, Sittingbourne**

APPEAL ALLOWED – AWARD OF COSTS TO BOTH PARTIES REFUSED

COMMITTEE REFUSAL

Observations

A not unexpected decision given that the Council did not contest the potential grant of planning permission.

It is disappointing that costs were not awarded to the Council, though it is worth noting that the appellant's costs claim was also unsuccessful.

- **Item 5.10 – Land North of Canterbury Road, Dunkirk**

APPEAL DISMISSED

COMMITTEE REFUSAL

Observations

The Inspector agreed with the Council on each of the three main issues.

The Inspector accepted that the Council can demonstrate a five-year housing land supply.

The Inspector also agreed with the Council that the development would have unacceptable landscape impacts, contrary to Policy DM24 of the Local Plan.

In addition, the Inspector agreed with the Council that the development would be contrary to the Council's settlement strategy.

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Appeal Decision

Site visit made on 23 October 2017

by **J L Cheesley BA(Hons) DIPTP MRTPI**

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

Decision date: 27 October 2017

Appeal Ref: APP/V2255/D/17/3181017

22 Kent Road, Sheerness, Kent ME12 1BS

- 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 Lisa Hammond against the decision of Swale Borough Council.
 - The application Ref 17/502143/FULL was refused by notice dated 22 June 2017.
 - The development proposed is a single-storey pitch roof side extension.
-

Decision

1. The appeal is dismissed.

Main issue

2. I consider the main issue to be the effect of the proposal on the character and appearance of the surrounding area.

Reasons

3. The appeal site lies within a primarily residential area. Although there are properties of different design, the general estate is laid out in a fairly uniform pattern. In particular, at the entrances at either end of Kent Road the dwellings are set at an angle. This is a characteristic of the wider area. The appeal property is a two-storey semi-detached dwelling set at an angle at the entrance to Kent Road.
 4. The corner property opposite the appeal site has a glazed single-storey side projection set back from the road behind a fence. That projection is not prominent within the streetscene. Otherwise, the uniformity of design and layout of the different groups of properties is an overriding characteristic of the area.
 5. Due to the building line of the property angled towards the road, the proposed single-storey side extension would project closer to the road than the existing dwelling. Due to its position and design, I consider that the proposed extension would appear prominent in this corner location, and would appear as an incongruous addition to the streetscene. The single-storey side projection would appear at odds with the uniformity of design of the original dwelling and estate layout. This would upset the rhythm of the built form.
-

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6. The proposed side extension would be situated very close to the neighbouring property. This would, exacerbate the prominent appearance of the development beyond the building line of that neighbouring property, creating a cramped and incongruous form of development.
7. The appellant has provided a plan to show that the proposed side extension would be situated on the same building line as the dwellings set at an angle at the opposite end of Kent Road. This may be so, but that terrace of properties is of the uniform two-storey design of the original estate and does not include a prominent single-storey side extension. In my opinion, for the reasons stated above with regard to the building line, the determining factor is the relationship of the proposal to the neighbouring property that fronts Kent Road.
8. In reaching my conclusion, I have had regard to all matters raised. I conclude that the proposal would have an adverse effect on the character and appearance of the surrounding area. Since the Council made its decision, the *Swale Borough Local Plan Bearing Fruits 2031* has been adopted in July 2017. The proposal would be contrary to Local Plan Policies CP4, DM14 and DM16 and guidance in the Council's Supplementary Planning Guidance *Designing an Extension - A Guide for Householders*, where they seek high quality design that is sympathetic and appropriate to its surroundings.

J L Cheesley

INSPECTOR



Appeal Decision

Site visit made on 24 October 2017

by **Timothy C King BA(Hons) MRTPI**

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

Decision date: 08 November 2017

Appeal Ref: APP/V2255/D/17/3179719

Cranbrook Farm, Callaways Lane, Newington, Kent ME9 7LU

- 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 Robert Lane against the decision of Swale Borough Council.
 - The application Ref 17/501019/FULL, dated 17 February 2017, was refused by notice dated 13 April 2017.
 - The development proposed is described as *'Removal of a derelict boundary fence and erection of a new 1.8 metre high brick boundary wall and renovation of an existing 340mm high brick garden retaining wall to an unlisted building in a Conservation Area'*.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the proposal's effect on the character and appearance of the surrounding area, with particular regard to its conservation area location.

Reasons

3. The proposal's description and an entry on the original application form is somewhat vague and there is little clarification in the appellant's Design and Access Statement. It is not clear how the existing 340mm high front garden wall would be renovated whilst the application form indicates that the new 1.8m high wall would be 'red brick to match existing.' As the proposal involves, in the first instance, the removal of what is described as a 'derelict fence' I have no information before me to suggest what it is exactly that the proposed red brick would match in appearance.
4. The Cranbrook Farm dwelling is faced with a yellowish colour render whilst the Granary building on the opposite side of the access driveway, although red brick in part, is too distanced from the intended line of the replacement 1.8m high wall to represent a marker building in this regard. Moreover, the sole plan submitted with the application (Drawing No RL-BW-02 Rev A) does little to inform or clarify matters, showing only the line of the wall and the trees to be removed behind.
5. In light of the above, when applying the statutory test under s72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, I am not convinced, in the absence of proper illustrative material, that the appellant has satisfactorily demonstrated how the proposal would preserve or enhance the character or appearance of the Newington Manor Conservation

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Area. I have no proper detail before me to suggest otherwise and I must therefore share the Council's concerns that the introduction of a significant expanse of 1.8m high wall close to, and on a prominent bend in the road, would be potentially intrusive and harmful to the streetscene. Although I consider that any resultant harm to the Conservation Area would be less than substantial there would be insufficient public benefits arising from the proposal to outweigh the degree of harm.

6. In such circumstances, despite the appellant's suggestion, allowing the appeal and granting planning permission with a condition imposed that would merely require the submission of materials for subsequent written approval would be unsatisfactory and not appropriate given the appeal site's setting. It is also necessary to have certainty as to the development's integration within the streetscene.
7. I thereby conclude that the proposal would be harmful to the character and appearance of the surrounding area and would fail to preserve or enhance the character or appearance of the Conservation Area. It would also be in material conflict with the design objectives of Policies E1, E15 and E19 of the adopted Swale Borough Local Plan, Policies CP4, DM14 and DM33 of the emerging Swale Borough Local Plan 'Bearing Fruits', and the Council's Supplementary Planning Guidance 'Conservation Areas'.
8. For the above reasons, and having had regard to all matters raised, the appeal does not succeed.

Timothy C King

INSPECTOR



Appeal Decision

Site visit made on 25 October 2017

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 13th November 2017

Appeal Ref: APP/V2255/W/17/3174106

Land adjoining and rear of Jubilee Fields, Oak Lane, Upchurch, Kent, ME9 7AQ

- 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 Clarendon Homes Limited against the decision of Swale Borough Council.
- The application Ref 15/501944/FUL, dated 27 February 2015, was refused by notice dated 27 October 2016.
- The development proposed is a mixed residential development of 41 No – 2, 3, 4 and 5 bedroom houses together with all associated garaging, parking and infrastructure.

Decision

1. The appeal is dismissed.

Main Issues

2. These are whether the proposed dwellings would be in a suitable location having regard to local policies concerned with housing in rural areas and whether any harm arising is outweighed by other material considerations.

Reasons

3. The appeal site comprises 1.7ha of gently sloping grazing land which lies towards the southern end of the village of Upchurch. It is bounded on two sides by housing and gardens along Jubilee Fields and Wallbridge Lane whilst there is largely open, undeveloped land on the other two.
4. The settlement strategy for Swale is hierarchical in that Sittingbourne provides the primary urban focus for growth and Faversham and Sheerness are the secondary urban focus with lesser aspirations for rural local service centres and other villages. The proposal would be on the edge of Upchurch but outside its built-up area boundaries. Policy ST3 of the Swale Borough Local Plan of 2017 provides that development will generally not be permitted at such locations.
5. Along with others, Upchurch is identified by the Local Plan as a settlement displaying "more sustainable characteristics" although this does not alter its Tier 5 village category. Paragraph 4.3.22 confirms that development at these villages is not required to meet the housing target but raises the possibility of some development in particular circumstances, mainly in order to meet local needs. Nevertheless, Policy ST3 only refers to minor infill and redevelopment sites within the built up area boundaries of these villages as permissible. As the proposal does not meet these policy criteria it would not accord with the overarching settlement strategy.

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6. Policy ST5 sets out the Sittingbourne area strategy and reinforces the approach of Policy ST3. However, of itself, it does not preclude development taking place elsewhere and consequently the proposal would not be directly at odds with it. Nevertheless this does not affect the broad conflict that would occur with Policy ST3. Furthermore, to permit the proposal would undermine and dilute the settlement strategy which is part of delivering sustainable development in Swale according to Policy ST1.
7. There are no objections on the grounds of character and appearance as the site is well contained and a landscape buffer would be incorporated on the western side. There would be no coalescence with nearby settlements. However, by encroaching into undeveloped land the proposal would have a negative impact on the intrinsic value of the countryside. Protecting this is one of the purposes of the built-up area boundaries. New planting would be undertaken to provide additional habitats as well as improve visual amenity but these benefits do not override the general detrimental effect of building on the land.
8. Future residents would be a little way from the village core and there are no significant transport links to and from Upchurch although there is a bus service. The larger town of Rainham is a short distance to the west but future occupiers would inevitably place some reliance on the car. Although the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas this is not a location that would make the fullest possible use of public transport, walking and cycling. One of the Framework's core planning principles is to actively manage patterns of growth accordingly and the proposal would not sit well with that objective.
9. In this case the accessibility to services and facilities would not be poor and there would be some scope to do so by means other than by private transport. However, the scale to which this would be likely to occur would be limited and when judged against the wider ambitions of the Framework the appeal site is not a good location for housing as it would encourage car use. This is a further factor that counts against the proposal but only to a limited degree.
10. In conclusion on this issue the proposal would not be in a suitable location for housing when assessed against relevant local policies.

Other material considerations

11. The Inspector's Report of June 2017 on the Local Plan examination found the Council had demonstrated a 5 year supply of deliverable housing sites to meet the requirements of the Framework. This position is not 'fixed' for all time and the main evidence to the examination was the Statement of Housing Land Supply (SHLS) from November 2016. Nevertheless for the purposes of this decision that finding is authoritative and of considerable weight and has also settled the questions about dealing with the shortfall and the buffer. On the other hand, the conclusions reached in appeal decisions immediately prior to the issue of the report have been overtaken by events.
12. With reference to the SHLS the appellant points out that the supply of sites exceeds that required by 300 and contends that this is "marginal" and "tenuous". The company also questions the robustness of the 5 year supply for a number of reasons including the absence of information about Year 1 of the housing trajectory and the significant numbers expected in Years 4 and 5. Delay in sites coming forward is clearly possible but from the evidence given

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there is no clear reason to think that those highlighted at Bobbing and Borden are not deliverable within 5 years. In any event, these sites account for 53 units which would not alter the overall picture in themselves.

13. According to the SHLS sites with planning permission are expected to deliver 1,745 units to 2020/21. Because of slow progress in schemes of over 50 units the appellant suggests that there may be a shortfall of 166 units. However, footnote 11 of the Framework confirms that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented. The information provided does not pass that test.
14. Three allocation sites which contribute to the 5 year supply are also referred to where either the submission of applications or the issuing of permission has not proceeded as expected. The Planning Practice Guidance indicates that deliverable sites could include those allocated for housing unless there is clear evidence that they will not be implemented within 5 years.
15. The bulk of the units at the three sites are due to be delivered in Years 4 and 5 of the Local Plan so there is scope for matters to 'quicken' and not jeopardise the overall supply position. In any case, the 5 year supply should be assessed from now rather than from the start of the plan period. It is nevertheless suggested that, at most, a deficiency of 276 units might occur but the level of detail about the circumstances and likely progress of these sites is thin. Consequently it has not been shown that these houses are not capable of being delivered within 5 years and hence the overall findings of the Local Plan Inspector should not be set aside.
16. The appellant refers to an appeal at Canterbury Road, Dunkirk where the figure of a 5.4 year supply has been challenged (APP/V2255/W/17/3172378). The outcome of that appeal is awaited and so the evidence provided in that case including the appellant's closing submissions can only be given limited weight. Whether or not Upchurch is more sustainable than Dunkirk is not a helpful comparison to make in determining this appeal since the site does not fit well with the broad strategy for the location of housing development.
17. The Local Plan is to be reviewed to resolve the details of the highway infrastructure required to support planned development beyond the first 5 years of the Local Plan period. As such, a full review is due to be completed for adoption by April 2022. However, this does not alter the present position in terms of housing supply or indicate a lack of confidence about delivery in the early stages of the plan period. Whilst the current Local Plan may be short-lived this does not change its status. The Council has already undertaken a further call for sites but this should be seen as pro-active plan-making rather than anything else.
18. The level of supply does not allow for much tolerance should housing sites fall away for any reason. However, national policy is predicated around achieving a 5 year supply including an additional buffer and nothing more than that. Notwithstanding the sites referred to by the appellant this is the current position in Swale for the purposes of deciding this appeal. As such, the Local Plan is not out-of-date and paragraph 14 of the Framework does not apply. There is no support in national policy for the notion that the presumption in favour of sustainable development should be applied for an interim period pending the Local Plan review.

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19. It is also notable that, unlike in a recent appeal decision in Canterbury District (APP/J2210/W/16/156397), the examination Inspector specifically rejected arguments that additional sites should be allocated to give extra flexibility. This appears to be due to the strategic aim of concentrating a higher proportion of growth on Sittingbourne and Sheppey rather than more viable sites elsewhere. Furthermore, whilst the appeal site is adjacent to the settlement it was considered as an allocation through the local plan process but did not score highly enough as the village lacks key facilities. This reinforces the objections previously identified especially as one of the core planning principles in the Framework is that the system should be genuinely plan-led.
20. Nevertheless in providing 41 new units the proposal would respond to the aim of boosting significantly the supply of housing. This consideration could nonetheless be applied to all proposals for residential development wherever they are located and the level of supply in Swale is presently such that this is a matter of limited weight.
21. The scheme makes provision for affordable housing. Planning obligations have been submitted to secure either 14 or 16 units. The higher figure would accord with the expectations of Local Plan Policy DM8. National policy nevertheless emphasises the importance of delivering a wide choice of homes and paragraph 54 refers to rural exception sites. The development is not promoted as such and there is no evidence that needs in the vicinity of Upchurch are particularly acute. That said, the provision of affordable housing would be likely to be beneficial and this is a matter of moderate weight in support of the proposal.
22. The Planning Practice Guidance notes that rural housing is essential to ensure that local facilities are viable but there is limited evidence that these are under threat. Nonetheless it is reasonable to assume that in the long-run the development would contribute to the vitality of the village as future residents would be liable to support and bolster local services. The size of the local community would also be enlarged. This is also a matter of some positive weight for the proposed development.
23. As a result of it Council revenues would increase and the obligations would also ensure payments are made towards education, social and other services. In environmental terms appropriate mitigation for protected species has been put in hand and the houses would be built to the relevant construction standards. However, the weight to be given to these considerations is limited since they are largely adhering to relevant policy expectations.
24. Concerns are raised by others relating to infrastructure and the lack of spare places at nearby schools, the loss of green space and ecological impacts, highway safety, the absence of on-site open space provision, the relationship with surrounding properties and the proximity to potentially disruptive agricultural uses. However, the Council has no detailed or technical objections and there is nothing that causes me to reach a different view.

Final balancing

25. The appeal site is said to be available now with a developer in place and housing could be delivered quickly as little new infrastructure would be required. However, it is outside the built-up area boundary of Upchurch and given that a 5 year housing land supply has been demonstrated the proposal is not supported by national policy. As such, the proposal conflicts with Policies

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ST1 and ST3 of the Local Plan. The prime objection relates to the undermining of the settlement strategy but there would also be a negative impact on the intrinsic value of the countryside and car use would be encouraged. Whilst many Local Plan policies would be complied with the failure to follow the recently adopted approach to the location of housing is so fundamental that the proposal would not accord with the development plan as a whole.

26. Paragraph 12 of the Framework confirms that where there is conflict with an up-to-date Local Plan proposed development should be refused unless other material considerations indicate otherwise. A number of benefits are put forward which would also respond positively to the economic, social and environmental dimensions of sustainable development identified in the Framework. However, none of these attract significant weight. So at the end of the day, the factors that favour the proposal do not collectively outweigh that conflict or the harm identified.
27. Therefore, for the reasons, given the proposal is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR

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Appeal Decision

Site visit made on 25 October 2017

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 13th November 2017

Appeal Ref: APP/V2255/W/17/3175061

Land adjacent Kaine Farm House, Breach Lane, Upchurch, Kent, ME9 7PH

- 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 T Ripley against the decision of Swale Borough Council.
- The application Ref 16/507425/FULL, dated 17 October 2016, was refused by notice dated 19 April 2017.
- The development proposed is demolition of seven existing farm buildings (totalling 1,666 sq m) and the erection of six detached houses and garages (totalling 1,096 sq m) and associated SUDS ponds, landscaping and wildlife planting.

Decision

1. The appeal is dismissed.

Application for costs

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

Main Issues

3. These are:
 - Whether the proposed dwellings would be in a suitable location having regard to local policies concerned with housing in rural areas and the accessibility to services and facilities;
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - Whether any harm arising is outweighed by other material considerations.

Reasons

Suitable location

4. The appeal site comprises Kaine Farm House and a collection of utilitarian agricultural buildings and stables which lie to the rear. These are not currently in active use and are dilapidated in appearance due to their state of repair. It is proposed to replace them with 6 houses. The immediate surrounding area is undulating countryside mainly comprising farm or grazing land. Nevertheless there are some dwellings nearby as well as agricultural, commercial and equestrian related built development and a solar farm. Whilst evidently rural in character the locality is not pristine countryside and due to the containment of the site the existing buildings do not detract unduly from it.

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5. The settlement strategy for Swale is hierarchical in that Sittingbourne provides the primary urban focus for growth and Faversham and Sheerness are the secondary urban focus with lesser aspirations for rural local service centres and other villages. The proposal would be outside the built-up area boundaries of any settlement. Policy ST3 of the Swale Borough Local Plan of 2017 provides that development will generally not be permitted at locations such as this.
6. The appeal site is not previously-developed land as defined by the National Planning Policy Framework but has buildings on it so that the proposal would not encroach onto greenfield land. In any event, not all brownfield land will be suitable for development according to paragraph 5.3.5 of the Local Plan. The text also indicates that new housing will normally be supported on appropriate windfall sites. But in delivering a wide choice of high quality homes Policy CP3 provides that windfall sites will be steered to locations in accordance with Policy ST3 as well as being subject to other caveats. Consequently the overarching settlement strategy is the key guide to the suitability of the scale and location of development. This includes the redevelopment of existing buildings to create windfall housing.
7. The site is in close proximity to other houses within the hamlet of Breach but because of its position and size cannot reasonably be described as an infill plot. This is typically a narrow gap in an otherwise built-up frontage. Consequently neither this argument nor those regarding redevelopment and windfall sites alter the conflict that would occur with Policy ST3. Furthermore, to permit the proposal would undermine and dilute the settlement strategy which is part of delivering sustainable development in Swale according to Policy ST1.
8. The closest settlement to the appeal site is Newington and, according to the appellant, it is 1.6km to the railway station, shops and services. These are therefore potentially within walking and cycling distance. The lack of a footpath and lighting along Breach Lane may be a deterrent for some although a quieter route along Mill Hill and a footpath is feasible. The range of facilities available at Newington is commensurate with a large village. Other places such as Sittingbourne and the Medway towns can be accessed by bus using the hail and ride stop very close to the site. Furthermore, the railway station provides access to London and can be reached without use of a car.
9. Indeed, the appeal site is not in a remote location so that future occupiers would have alternative travel choices to the car. The smaller villages of Upchurch, Lower Halstow and Hartlip are not far away. In addition, there are various employment opportunities fairly close by including the Newington Industrial Estate and Enterprise Centre. However, the extent of conveniently available destinations is not of a high order and the means to reach them has limitations. There is therefore likely to be overall reliance on car use.
10. The appellant refers to various decisions taken by the Council at sites in Upchurch, Danaway and Newington and an appeal decision at Spade Lane, Hartlip (APP/V2255/A/14/2220447) where the issue of the relationship to services was considered. These have been taken into account but are not definitive and the proposal has been assessed on an individual basis.
11. In this case the accessibility to services and facilities would not be poor. There would be scope to do so by means other than by private transport but the extent to which this is likely to occur would be limited. Furthermore, Policy CP2 emphasises that development should be located in accordance with the

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settlement policies in order to minimise the need to travel. The proposal would encourage car use and therefore would not contribute to the ambition of achieving an integrated approach to the provision of transport infrastructure. Overall it would not promote sustainable transport and hence the proposed development would not be in line with Policy CP2.

12. In conclusion on this issue the proposed dwellings would not be in a suitable location for housing and would not accord with relevant development plan policies in this respect.

Character and appearance

13. The proposed houses would be sizeable and predominantly two stories high. They are designed in a vernacular fashion and most of them would be arranged around a central court which is intended to resemble a traditional farmyard. Although generally taller the new buildings would occupy similar positions to the existing ones. However, the overall built footprint and hard surfacing would be reduced and the westerly 'spread' of development would be slightly less than it is now. Planting is also proposed together with a landscape buffer and wildflower meadow beyond the southern and western boundaries.
14. Whilst the rundown buildings at the site are not of great beauty neither are they uncommon features in the countryside. By contrast the dwellings would have an obviously domestic appearance and the proposal would effectively create a short residential cul-de-sac with a close juxtaposition of buildings. This suburban layout would be wholly at odds with the pattern of development nearby which is characterised by dwellings fronting directly onto the road and by a rather scattered disposition of buildings. Whilst attractive in themselves the relationship of dwellings with one another and their design would not result in a group that 'belongs' in this setting. Rather it would appear as having been artificially imposed and the proposal would accordingly be discordant.
15. The site is in a slight dip and the topography, vegetation and other existing buildings would restrict public views. Nevertheless the proposal would be visible at close hand from the public footpath as it runs through the site and also from along it for a little way to the west. The other main viewpoints would be at the site entrance and along the lane to the north. From these places the adverse visual effect of a cluster of houses unexpectedly extending back from the lane in a rural setting would be experienced. Whilst there are other houses in the vicinity it is the number of residential buildings, their layout and the development in depth that would be particularly jarring in the local scene.
16. Local Plan Policy DM24 seeks to conserve and enhance valued landscapes including those that are not designated. Because the site is already developed the wider landscape impacts would be neutral. However, the proposal would harm the character and appearance of the surrounding area. It would therefore not comply with the general development criteria of Policy DM14 which, amongst other things, expects development to be sympathetic and appropriate to its location.

Other material considerations

17. The Inspector's Report of June 2017 on the Local Plan examination found the Council had demonstrated that there is a 5 year deliverable supply of sites to meet the requirements of the Framework. This position is not 'fixed' for all

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time but for the purposes of this decision that finding is authoritative and of considerable weight. The appellant has not provided detailed evidence to contest the Council's stance but refers to an appeal at Canterbury Road, Dunkirk (APP/V2255/W/17/3172378) where the figure of a 5.4 year supply has been challenged. The outcome of that appeal is awaited and so the conclusions in the proof provided can only be given limited weight.

18. The Local Plan is to be reviewed to resolve the details of the highway infrastructure required to support planned development beyond the first 5 years of the Local Plan period. As such, a full review is due to be completed for adoption by April 2022. However, this does not change the present position in terms of housing supply and the likelihood that the current Local Plan will be short-lived does not affect its status. The Council has already undertaken a further call for sites but this should be seen as pro-active plan-making rather than anything else.
19. The level of supply does not allow for much tolerance should housing sites fall away for any reason. However, national policy is predicated around achieving a 5 year supply including an additional buffer and this is the current state of play in Swale. As such, the Local Plan is not out-of-date and paragraph 14 of the Framework does not apply. It is also notable that the examination Inspector specifically rejected arguments that additional sites should be allocated including those in the rural areas. This appears to be due to the strategic aim of concentrating a higher proportion of growth at Sittingbourne and Sheppey rather than more viable sites elsewhere.
20. The expectation is that the proposal would provide for executive housing. This is said to be needed in Swale as not many such properties are built. However, there is no evidence to indicate that this type of accommodation should be prioritised. The Planning Practice Guidance notes that rural housing is essential to ensure that local facilities are viable but there is limited evidence that these are under threat. In providing 6 new units the proposal would respond to the aim of boosting significantly the supply of housing. This consideration could nonetheless be applied to all proposals for residential development wherever they are located and the level of supply in Swale is presently such that this is a matter of limited weight.
21. The buildings to the west of Kaine Farm House have previously been used for calf rearing and as a farm shop. These uses could lawfully resume in the future with the potential for unneighbourly consequences for those living close to the site. It is also reasonable to suppose that the appellant would wish to obtain a return from the land rather than leaving it idle.
22. Whilst theoretically possible it is nevertheless necessary to consider the likelihood of disruptive activities resuming. There is evidence from a local farmer that the buildings could be used intensively for keeping livestock but that they are in need of investment. From this it cannot be certain that restoring the existing buildings for such purposes would be economic. Nothing indicates that circumstances have changed to the extent that it would now be financially worthwhile to re-commence uses that ceased some time ago. Furthermore, the buildings are not well suited for conversion to commercial uses as the cost of meeting energy performance standards is likely to outweigh any benefits. Whilst neither eventuality can be ruled out the risks to amenity are small and this matter correspondingly carries limited weight.

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23. This finding also means that the potential traffic implications of a light industrial use carries little weight as they are unlikely to occur. The difference between the estimated two-way vehicle trips between the proposed and past uses of the site would be minimal. Previously large and noisy agricultural vehicles would have gone into and out of the site but that is not the situation now and the prospects of this re-occurring are slight. Therefore the claimed reduction in vehicle movements and associated impacts is a neutral factor in the overall balance and is not one that favours the proposal.
24. Prior approval is not required for the change of use of the rearmost building to form 2 residential units. This represents a legitimate alternative option for the appellant. Even if the open-sided barn were also to benefit from prior approval as the appellant originally there would be a lingering uncertainty about the other buildings at the site. The proposal would result in a comprehensive redevelopment and settle its immediate future once and for all. However, there is no evidence that an agricultural use would automatically take place in the remaining structures for the reasons previously given. Therefore sweeping them away is not, in itself, a consideration of great weight.
25. If implemented the proposal would increase the distances between Kaine Farm House and 4 Breach Lane and the closest building on the appeal site from about 6.6m and 12.4m to around 27.8m and 31.6m respectively. However, the nearest existing structure is quite low due to the fall of the land and is offset from the main rear-facing windows of both properties. Consequently the impact on existing living conditions is not as marked as the distances suggest and so the greater physical separation that would occur is of limited benefit.
26. The proposal would increase the amount of soft landscaping and has the potential to improve biodiversity in line with the Framework. The alignment of the footpath could also be improved to give it greater definition thereby affording walkers greater safety in terms of potential conflict with vehicles. That said, there is no evidence that the current arrangement is dangerous or has deterred usage. The sustainability credentials of the proposed houses would be high. This is laudable but reaching these standards is increasingly becoming the norm. Nevertheless these are all aspects of the proposal that weigh in support of it although not significantly.
27. One of the units is earmarked for a relative of the appellant in order to meet his needs in a tailored manner. It is clearly an important matter for the family to be able to make provision in this way to overcome existing accommodation deficiencies. Whilst there is no reason to doubt the appellant's intentions in this regard there is no mechanism in place to secure this arrangement. Neither is there evidence about other possible options or whether the situation requires the construction of 6 additional houses. This is nevertheless an additional material consideration.
28. At Milstead an Inspector has recently allowed an appeal for a single dwelling (APP/V2255/W/17/3171596) in conflict with the locational strategy of the then Local Plan. However, the scheme was described as infilling within the hamlet and was clearly of a different scale to the proposal. Hence it can be distinguished from it.
29. Whilst not universal there is a considerable volume of local support for the proposal. I have taken this into account particularly in assessing the ease and

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likelihood of accessing services and the station at Newington. Nevertheless these views in themselves are not decisive.

30. The appellant has put forward a wide range of considerations as benefits that would ensue from the proposal. These have been assessed above and weight attributed accordingly. However, in many cases similar planning advantages could be derived from a scheme that was for a lesser scale of development and no evidence has been put forward to indicate that this is not possible. This therefore further reduces the weight to be attached to them.

Final Balancing

31. The proposed development would undermine and dilute the settlement strategy for Swale, encourage car use and harm the character and appearance of the surrounding area. It would conflict with the development plan as a whole. Paragraph 12 of the Framework confirms that it should therefore be refused unless other material considerations indicate otherwise. Whilst there are a number of these that favour the proposal they do not collectively outweigh the development plan conflict and the harm identified.
32. Therefore for the reasons given the proposal is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR



Costs Decision

Site visit made on 25 October 2017

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 13th November 2017

Costs application in relation to Appeal Ref: APP/V2255/W/17/3175061 Land adjacent Kaine Farm House, Breach Lane, Upchurch, Kent, ME9 7PH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Swale Borough Council for a full award of costs against Mr T Ripley.
 - The appeal was against the refusal of planning permission for demolition of seven existing farm buildings (totalling 1,666 sq m) and the reception of six detached houses and garages (totalling 1,096 sq m) and associated SUDS ponds, landscaping and wildlife planting.
-

Decision

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

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. When the appeal was made in May 2017 the Inspector's Report into the Local Plan examination had not been received. It was therefore reasonable for the appellant to include the argument that a 5 year housing land supply had not been demonstrated. The adoption of the Local Plan in July 2017 brought some clarity to the situation. However, because housing supply is a "moveable feast" the appellant was entitled to maintain that, for a variety of reasons, the accepted position should be treated with caution. As part of this attention was drawn to another appeal at Canterbury Road, Dunkirk where the figure has been challenged (APP/V2255/W/17/3172378). Overall the position was not so clear-cut that it was unreasonable to continue to advance this issue as a material consideration.
4. Furthermore, settling the question of the 5 year housing land supply would not necessarily be decisive. The appellant has also put forward a number of factors supporting the scheme backed up by adequate evidence. Whatever the Council's views about the merits of the site and the conflict with the development plan this was not an appeal with no reasonable prospect of succeeding. Whilst that has been the eventual outcome it was not unreasonable to pursue the appeal so that an impartial decision-maker could undertake the necessary balancing. Therefore the circumstances outlined in the first bullet point of paragraph 053 of the Planning Practice Guidance do not obtain in this case.

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5. The Council also complains about having to respond to "factually incorrect information" in the appellant's appeal statement. None of the matters referred to comprise blatant attempts to mislead or to provide inaccurate data. Rather they represent the appellant's interpretation of relevant considerations in support of the appeal. As part of the normal 'cut and thrust' of the process the Council has had the opportunity to respond and it was reasonable for the original comments to set out the appellant's views.
6. Therefore unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not occurred and an award of costs is not warranted.

David Smith

INSPECTOR



Appeal Decision

Site visit made on 18 October 2017

by **S J Buckingham BA (Hons) DipTP MSc MRTPI FSA**

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

Decision date: 14th November 2017.

Appeal Ref: APP/V2255/W/17/3178562

Land adjoining Sydney Cottage, Dunkirk Road South, Dunkirk ME13 9PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr P Jenkins against the decision of Swale Borough Council.
 - The application Ref 17/500755/OUT, dated 10 March 2017, was refused by notice dated 5 May 2017.
 - The development proposed is erection of dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application has been made in outline, with all matters reserved, and I have determined it on that basis.
3. The Council has confirmed that the emerging local plan was found sound by the Inspector and adopted by the Council on 26 July 2017. I am required to determine the appeal on the basis of the development plan and national policy in place at the time of my decision, and accordingly I have done so.

Main Issue

4. The main issue in this case is whether the site is a suitable location for housing, having regard to local and national planning policy, and to the effect of the development on the character and appearance of the countryside.

Reasons

5. The appeal site is an area of pasture, part of a larger field contained by rising ground fringed by trees to the north, south and east, and the road to the west. The site contains a purpose built stable block, currently in use for domestic storage. It is in an area along Dunkirk Road South, a rural lane, characterised by scattered houses in very large plots, with the exception of the small, densely developed group, Iron Hill Cottages. The site is within the Blean Woods Special Landscape Area, one of ancient woodland.
 6. While the application is in outline, the indicative drawings show a two storey dwelling, with two single storey side wings to provide a garage and additional residential accommodation. It is likely that the development would be in a form similar to this. There would also be an associated vehicular access and driveway into the site.
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7. A new local plan, Bearing Fruits 2013: the Swale Borough Local Plan 2017 (the LP) was adopted by the Council in July 2017. Policy ST3 sets out the Swale settlement strategy, which identifies previously developed land within defined built up area boundaries and sites allocated by the Local Plan as the principal foci for development. It seeks to restrict development in the open countryside except where it would be supported by national planning policy, and where it would be able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
8. The site is in an area outside any defined settlement boundary and therefore in the countryside, and is not one allocated for housing. The closest settlement is Boughton under Blean, which is defined as a rural local service centre within the LP, as it offers a range of services and facilities, including good transport links. However, the appellant has confirmed that the site is around 1.5 km from the village centre, and further still from services in the wider area such as the railway station at Selling. As these would be accessed mainly along narrow and unlit rural roads, these distances would further than would be reasonably attractive or convenient for walking. Future occupiers of the dwelling would therefore be likely to access many of the day to day facilities by private car journey. I conclude, as a result, that, despite the presence of other dwellings in the vicinity of the site, it would be functionally isolated.
9. Other planning decisions have been put in front of me, including an appeal decision¹, in which the issue of reasonable proximity to facilities were considered. However, each case should be determined on its merits, and the local circumstances in this case seem to me to be very likely to deter walking to the village to meet the daily needs of future occupiers of the development.
10. The appellant has also put before me a previous appeal decision relating to the building of a new dwelling in the garden of The Firs, opposite the current appeal site². I have taken account of the findings of the Inspector in that case, and, although she noted that there are other properties along the road, she did not reach a definitive conclusion on whether or not that site was isolated for the purposes of planning. This does not therefore cause me to alter my conclusion on this point.
11. The site is currently within a larger open field, with visual and landscape quality derived from its openness, the presence of mature trees at its margins, and its setting along the rural lane. Although the illustrative information shows that the design of the dwelling would be a considered one, reflecting local vernacular traditions, it would nonetheless involve the insertion of built development into this rural setting, where there previously had been none.
12. While the appeal dwelling would retain an open setting around it, and while many other dwellings in the area benefit from large plots, it would nonetheless be an intrusion into the open pattern of development in the vicinity, and would begin to erode the spacious character along Dunkirk Road South. It would as a result be harmful to its rural setting, including that of the Blean Woods Special Landscape Area.

¹ Planning Application SW/14/0541 and Appeal Ref: L2630/A/13/2205855

² Ref APP/V2255/W/15/3004335

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13. The development would therefore not be a suitable location for housing in terms of the adopted settlement strategy, and would fail to protect the character of the countryside. It would as a result conflict with policy ST3 of the LP. It would also conflict with policy DM14 of the LP which seeks development which conserves the natural and built environments, with policy DM24 of the LP, which seeks to protect the value and character of the Borough's landscapes, and with policy DM26 of the LP which seeks to avoid development which would significantly harm the character of rural lanes.

Planning Balance

14. The submitted evidence shows that there was a lack of a five year deliverable housing land supply at the time the Council determined the application. However, the local plan has recently been through an Examination in public. The Inspector, in her report of June 2017, concluded that she was content that it provided for a 5.4 year housing land supply, and that it identified sufficient deliverable sites to meet the full Objectively Assessed Need.
15. The appellant has challenged this assessment, on the basis of concerns raised during the examination process and the Inspector's conclusion that the adopted plan should contain a commitment to an early review. He also points out that the most up to date evidence on which the Inspector's conclusions were based was the Strategic Housing Land Assessment 2016 (the SHLS), and that as the 5 year housing supply position is not static, the position may have changed. The appellant has also questioned the trajectory for delivery of dwellings. On the basis of these factors, it is suggested, the 5.4 year supply might be considered marginal, and not robust.
16. Planning Practice Guidance states that the examination of Local Plans "is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position"³. This is a consideration of some weight.
17. Although the appellant queries the Council's calculation of the five year housing land supply and the addition of a 5% buffer, it remains the case that the Inspector, presented with detailed evidence, accepted this approach. Before me is the Council's "Call for Sites", started in August 2017 as part of the review process to identify additional land for housing, responding to the Examination Inspector's call for an early review and intended to identify additional sites for housing. There is nothing before me therefore to suggest that there would a shortfall in supply.
18. In relation to deliverability, the appellant has supplied evidence relating to two allocated sites. As, however, the delivery period for one of those is for years 4 and 5, and for the other, year 2, and as the appellant's concerns relate largely to the future discharge of reserved matters and conditions, I conclude that while this suggests the possibility of future shortfalls in delivery, it does not convincingly demonstrate that there has been under-delivery in year 1 or that the current deliverable housing land supply is not robust. Other allocated sites are also discussed, and shortfalls suggested, but this evidence is speculative,

³ Ref ID 3-033-20150327

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and again does not demonstrate conclusively that the deliverable supply is currently out of date.

19. Therefore, although the Council has not yet published the annual assessment of housing sites, in the absence of clear substantive evidence that circumstances have materially changed since the Examination, and as the identified figure for housing land supply is in excess of 5 years, the balance of probability is that at this early point in the life of the new Local Plan there remains at least a 5 year deliverable supply.
20. An appeal decision⁴ has also been put before me relating to a different local authority area and where a similar 5 year housing land supply position was considered. The Inspector in this case concluded that the evidence before him was not fully conclusive, but that if the 5 year supply was at best marginal, granting permission for the development, which was for 85 dwellings, would provide an element of extra flexibility and help to compensate for any further slippage in any of the other planned sites. The provision of a single additional dwelling in the current appeal would, however, make only a very minor contribution in helping to compensate for slippage on any of the planned sites, and it has not been clearly demonstrated that the housing land supply figure is marginal. The circumstances are not therefore directly comparable, and this does not therefore cause me to alter my conclusions on this case.
21. I have therefore determined the appeal on the basis that the Council is able to demonstrate a five year supply of deliverable housing land supply in accord with paragraph 47 of the Framework. The policies in the local plan can therefore be regarded as up-to-date, and I afford them full weight. Paragraph 14 of the Framework, which would require the application of the "tilted balance" is not therefore not engaged.
22. In considering the unweighted balancing exercise, the proposal would provide a single new dwelling, but this would be a limited benefit. The decision in relation to the site adjoining The Firs, where greater weight was given to the supply of additional housing, was made a time when it was agreed by the parties that 5 year housing land supply could not be demonstrated. A number of other appeals have been put before me where, similarly, a decision was reached before the 5.4 year housing land supply was pronounced sound by the Local Plan Inspector⁵. The circumstances of these cases are therefore no longer comparable in this respect.
23. The creation of a single dwelling would not provide more than a very limited contribution to the vitality of the rural community or more than limited economic benefits during construction. As I have found harm to the countryside, I cannot agree with the appellant's contention that there would be any environmental benefits, while I can accord only neutral weight to potential benefits to biodiversity or in terms of energy or water efficiency.
24. The development in this case would conflict with the Council's up-to-date, planned approach to achieving sustainable patterns of growth, which is advocated by the Framework and to which I attach significant weight. The development would not, as a result, represent sustainable development.

⁴ Ref: APP/J2210/W/16/3156397

⁵ Ref: APP/V2255/W/16/3146393; Ref: APP/V2255/W/15/3067553; Ref: APP/V2255/W/163148140; & Ref: APP/V2255/W/16/3162806.

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Conclusion

25. The harm I have identified through conflict with the development plan, taken with the harm I have identified to the countryside, including to the rural lane and the Special Landscape Area, would not therefore be outweighed by any benefits, and there are therefore no material considerations which indicate that planning permission should be granted notwithstanding this conflict. On this basis I conclude that the appeal should be dismissed.

S J Buckingham

INSPECTOR

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Appeal Decision

Site visit made on 18 October 2017

by **S J Buckingham BA (Hons) DipTP MSc MRTPI FSA**

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

Decision date: **15th November 2017**

Appeal Ref: APP/V2255/W/17/3181426

1 Broomhill Cottages, Hanslette Lane, Ospringe, Faversham, Kent ME13 ORS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Roger Bishenden against the decision of Swale Borough Council.
 - The application Ref 17/502025/OUT, dated 21 April 2017, was refused by notice dated 16 June 2017.
 - The development proposed is three bedroom bungalow and double garage.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application has been made in outline, with all matters reserved, and I have determined it on that basis.
3. The Council has confirmed that the emerging local plan was found sound by the Inspector and adopted by the Council on 26 July 2017. I am required to determine the appeal on the basis of the development plan and national policy in place at the time of my decision, and accordingly, I have done so.

Main Issue

4. The main issue in this case is whether the site is a suitable location for housing, having regard to local and national planning policy, and to the effect of the development on the character and appearance of the area, and on the Kent Downs Area of Outstanding Natural Beauty.

Reasons

5. The appeal site is an area of open land set in the open countryside and within the Kent Downs Area of Outstanding Natural Beauty (AONB). It is a roughly triangular piece of woodland, bounded to the north by the M2 motorway, adjoining grazing land to the west, and facing a large orchard across Hanslett Lane, a designated rural lane. The appeal proposal is for a three bed, detached bungalow with detached double garage.
 6. A new local plan, Bearing Fruits 2013: the Swale Borough Local Plan 2017 (the LP) was adopted by the Council in July 2017. Policy ST1 of the LP reflects the presumption in favour of sustainable development contained in
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the National Planning Policy Framework (the Framework). Policy ST3 sets out the Swale settlement strategy, which identifies previously developed land within defined built up area boundaries and on sites allocated by the Local Plan as the principal foci for development. It seeks to restrict development in the open countryside except where it would be supported by national planning policy, and would be able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.

7. Policy ST7 relates to development in the Faversham area, and seeks to provide housing at allocations or other appropriate locations where the role and character of Faversham and its rural communities can be maintained or enhanced.
8. The site is in an area outside any defined settlement boundary and therefore in the countryside, and is not one allocated for housing. The closest settlement, Painters Forstal, is itself considered to be a level 5 village in the open countryside, where development is not required to meet the Local Plan housing target.
9. Painters Forstal has only limited facilities, and future occupiers of the site would be likely to be dependent on private car journeys for access to day to day services and facilities. While there are some other dwellings in the area of the site, including Broomhill Cottages themselves, they are few and are scattered, and I conclude as a result that the development would be physically and functionally isolated.
10. Notwithstanding the presence of the motorway, the vicinity of the site has good visual and landscape quality derived from its openness, the presence of mature trees and hedgerows along Hansletts Lane, and the rural buildings, including the traditionally-styled Broomhill Cottages and a former Oast House, dispersed along the lane.
11. The proposal would involve the insertion of additional built development into this setting. Although the proposal is in outline, it is likely that the general form of development will be similar to that shown on the illustrative plan, and that it would constitute the building of a three bedroom bungalow and double garage. This would represent the creation of significant and noticeable amount of built form where there had previously been none, augmented by a moderately large hardstanding area. It would therefore have an urbanising effect on the previously open land, and would involve the removal of an area of woodland. It would as a result harm the existing pattern of development along Hansletts Lane and diminish the contribution of the site to its rural setting.
12. Paragraph 115 of the Framework is clear that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty. The development is located within the AONB, and, while small in scale, I conclude that to the same extent that it would harm the character of the countryside, the development would also fail to conserve the special qualities and distinctive character of the AONB of which it forms a part.
13. The development would therefore not be a suitable location for housing in terms of the adopted settlement strategy, and would fail to protect the

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character of the countryside. No evidence has been put before me that it would in other respects be supported by national planning policy, and I have identified none. It would therefore conflict with policies ST1, ST3 and ST7 of the LP.

14. It would also fail to comply with the requirements of the Framework and those of policy DM24 of the LP, which seeks to conserve and enhance the special qualities of the AONB.

Planning Balance and Conclusion

15. The submitted evidence shows that there was a lack of a five year deliverable housing land supply at the time the Council determined the application. However, the local plan has recently been through an examination in public. The Inspector, in her report of June 2017, concluded that she was content that it provided for a five year housing land supply, and that it identified sufficient deliverable sites to meet the full Objectively Assessed Need. I can see no reason to doubt this assessment, while the appellant has put forward no evidence to dispute this.
16. I have therefore determined the appeal on the basis that the Council is able to demonstrate a five year supply of deliverable housing land supply in accord with paragraph 47 of the Framework. The policies in the local plan can therefore be regarded as up-to-date, and I afford them full weight. Paragraph 14 of the Framework, which would require the application of the "tilted balance" is not therefore not engaged.
17. In considering the unweighted balancing exercise, the proposal would provide a single new dwelling, but in absence of a housing supply shortfall, this would be a limited benefit. It would not provide more than a very limited contribution to the vitality of the rural community or limited economic benefits during construction. No consideration of any additional benefits has been put forward by the appellant excepting the provision of a property for the enjoyment of the owner and his or her family.
18. Although the appellant has contended that the purpose of the local plan is to provide for larger sustainable developments, it remains the starting point for decision making, as acknowledged in paragraph 11 of the Framework, and applies to all forms of development. The development in this case would conflict with the Council's up-to-date, plan-led approach to achieving sustainable patterns of growth, which is advocated by the Framework and to which I attach significant weight. The development would not therefore lead to the creation of a new dwelling in a sustainable location.
19. This harm, taken with the harm I have identified to the countryside and to the AONB, would not therefore be outweighed by any benefits, and there are therefore no material considerations which indicate that planning permission should be granted notwithstanding the conflict with the development plan I have identified. I therefore conclude that the appeal should be dismissed.

S J Buckingham

INSPECTOR

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Appeal Decision

Site visit made on 14 November 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 17th November 2017

Appeal Ref: APP/V2255/W/17/3177790

Land on the corner of Range Rd, 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 17/500436/FULL, dated 6 February 2017, was refused by notice dated 28 April 2017.
 - The development proposed is new 4 bedroom, detached house with an integral garage and parking space accessed onto the highway.
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Decision

1. I dismiss the appeal.

Main Issues

2. These are:
 - The effect of the proposal on the character and appearance of the street-scene and the wider area.
 - The effect of the proposals on the living conditions of prospective and existing residents.

Reasons

Policy and the Previous Appeal

3. Although referred to in the reasons for refusal as an emerging Plan, the Swale Borough Local Plan 'Bearing Fruits 2031' was adopted on 26 July 2017 and is therefore now part of the Development Plan. Policy CP4 requires good design that is appropriate to the context in respect of materials, scale, height and massing, as well as other considerations of landscape and the retention of features that contribute to local character and appearance. General development criteria are set out in Policy DM14 including the need to reflect the positive characteristics of the site and locality. The Government attaches great importance to the design of the built environment as stated in paragraph 56 of the National Planning Policy Framework; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
4. The plot proposed for the single dwelling is to the rear of a semi-detached pair of newly constructed dwellings, permitted on appeal in January 2016, reference APP/V2255/W/15/3135783. The findings of that Inspector regarding the location of the dwellings and the surroundings are noted and appear not to

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have changed. The then lack of a 5 year supply of housing land is not now an issue, although the comment of the appellant regarding the need for higher housing requirement figures is acknowledged. Nevertheless, the Local Plan has only recently been adopted and the higher figures referred to are in draft only.

Character and Appearance

5. The residential area comprises a rectangle of roads, with a large grass area in the centre. Range Road has frontage development of mainly similar semi-detached, two-storey houses to the north of the site, with another group to the west. However, development rarely faces other built form, since there is open land to the east of the road, and the grassed area has its own frontage to the west of the site.
6. With regard to the requirements of Policy DM14 the positive characteristics of the locality are the spacious grassed area, the open aspects provide by the linear arrangement of buildings and the lack of double-sided frontage development. The appeal proposal would adversely affect this arrangement, being placed to the rear of the continuous development on Range Road, and would impinge visually into the large grassed area. The plot is contained within a line formed by the rear boundaries of dwellings to the north, but would appear out-of-place and isolated adjoining a series of semi-detached pairs.
7. For those reasons the proposal is not appropriate in its siting and detached massing and scale, and would not respect the nearby development. There would be no adverse effect on the wider landscape, similar to the findings of the previous Inspector, but harm would be caused to the more local, linear form of development. As a result, the proposal would not accord with the requirements of Policy CP4 in addition, and would not meet the standard sought in Framework paragraph 56 with regard to this main issue.

Living Conditions

8. The Council are critical of the proximity and orientation of the proposed dwelling relative to existing dwellings and their gardens. A requirement for a back-to-back dimension of 21m between dwellings is quoted, although the Council acknowledge that no such relationship would exist in this case. The back-to-side dimension relative to numbers 9 and 10 Range Road would be acceptable in protecting the privacy of the existing occupiers since there would be no windows on the flank elevation of the new dwelling. In the opposite direction there may be a chance to see into the rear garden from the upper windows of numbers 9 and 10, but this is not a harmful relationship at the proposed distance and with an intervening boundary fence or wall.
9. With regard to the view north from the proposed dwelling towards the older houses on Range Road, there would still be no back-to-back relationship and the view would be over the length of the proposed garden to the rear part of the garden to number 11. The separation distances from first floor windows would be acceptable and any direct view of the more private area of garden nearer the rear of the existing dwelling would be significantly shielded by the garage block behind 9 and 10. Any view towards number 10 would be oblique and would not cause harm.
10. The introduction of the building would feature in the outlook from the rear windows and gardens of adjoining properties but with the open land of the

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grassed area and the open aspect to the opposite side of the road, the effect would not be harmful in planning terms.

11. It is concluded that functional aspect of the design does reach the standard sought in Policies CP4 and DM14, as well as the Framework as regards the effect on the living conditions of existing and prospective occupiers.

Conclusions

12. The site is outside settlement boundaries and the planning balance is different than that in 2016 due to there being a 5 year supply of housing land. The Council have nevertheless cited policies on design and layout rather than the principle, and the proposal fails in those respects in its effect on the built form and local surroundings. The design is however acceptable in its effects on the living conditions of neighbouring occupiers. The comments of a co-owner of the land are noted, but any agreement to develop the proposal would be a separate consideration from the planning regime in any event. Similarly the possibility of covenants would have to be considered separately.
13. The proposed siting and its visual effect on the pattern of development and open space fails to satisfy the requirements in the relevant Development Plan policies or the Framework on design, and for the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

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Appeal Decision

Site visit made on 14 November 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 20th November 2017

Appeal Ref: APP/V2255/W/17/3177787

Orchard Way, Eastchurch, Sheerness, Kent ME12 4DS

- 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 17/500090/FULL, dated 23 December 2016, was refused by notice dated 13 March 2017.
 - The development proposed is a pair of 3 bedroom semidetached dwellings with associated parking spaces and a 4 bedroom house with double garage and parking all served by the proposed extended highway.
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Decision

1. I dismiss the appeal.

Main Issues

2. These are;
 - The principle of development in this location having regard to policy and previous grant of permissions.
 - The effect of the proposal on the character and appearance of the street-scene and the wider area.

Reasons

Policy and Previous Grants of Permission

3. Although referred to in the reasons for refusal as an emerging Plan, the Swale Borough Local Plan 'Bearing Fruits 2031' was adopted on 26 July 2017 and is therefore now part of the Development Plan. Policy ST3 sets out the Swale Settlement Strategy with development outside built-up boundaries not being permitted unless supported by national planning policy and able to demonstrate that it would contribute to such as landscape setting and the beauty of the countryside. Policy DM24 concerns valued landscapes as referred to in section 11 of the National Planning Policy Framework on conserving and enhancing the natural environment.
4. A detached dwelling has recently been built adjacent to the site at what is now shown as 37 Orchard Road, and the Council have supplied the Committee Report (Ref: 15/509875/FULL). The summary states that *'in light of the appeal decision for land adjacent to 11 Range Road, 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.'*

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The site is considered to be a sustainable location for the dwelling proposed with no other material considerations indicating that permission should be refused. A copy of that appeal decision (Ref; APP/V2255/W/15/3135783 dated 28 January 2016 is also supplied.

5. However, the policy background that informed both the appeal Decision and the Council's subsequent grant of permission has changed significantly since that time. The Council is able to demonstrate a 5 year supply of housing land and in the current appeal there is an 'in-principle' objection to further development in this area outside any settlement boundary. The comment of the appellant regarding the need for higher housing requirement figures is acknowledged, but the Local Plan has only recently been adopted and the higher figures referred to are in draft only.
6. The proposal is not able to rely on the provisions of paragraphs 49 and 14 of the Framework as the policies for the supply of housing should not be considered out-of-date so early after the adoption of the Local Plan. Whilst the Council acknowledge the previous lack of supply in the reason for refusal, the view then was that the adverse impacts of permitting the development of the proposed 4 dwellings would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
7. The site that is proposed to be built on should be regarded as being previously developed land as defined in Annex 2: Glossary of the Framework, but only due to it having the hardstanding, since the only extant buildings are those of the stables, which are off-site. Therefore, taking account of the submissions presented to this Appeal, the conclusion is that development as proposed would be contrary to the Swale Settlement Strategy as set out in Policy ST3 and there is an in-principle policy objection to the proposal in this location.

Character and Appearance

8. The residential area comprises a rectangle of roads, with a large grass area in the centre. Whilst Range Road to the south has a regular form of development only on a single side, Orchard Road displays a more varied character and appearance including post-war 'prefab' bungalows together with individual houses, a more recently constructed terrace and more semi-detached houses. The built-up frontage is on both sides of the road to the west, with only single sided development from number 29 to the new number 37.
9. That present arrangement appears to reach a defined point of change at the gates to the stables complex, adjacent to the recently completed number 37, and although there is clearly hardstanding and vehicles, including at the time of the site inspection, a large trailer, the character is one of a transition to truly open countryside with the rural buildings of the stables further to the east. As stated in the previous main issue, the extent to which the appeal site is previously developed land is not fully apparent, it appearing from public viewpoints as open land with trees. It is accepted that the proposal would extend the roadway and place new gates at the east end of the site, to serve the stables with a smaller parking and turning area.
10. The projection of linear development along Orchard Road through the proposed development beyond Range Road and number 37 would appear as encroachment into the countryside and would cause harm to the rural

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character of the present stables land, bringing that use visually closer to the built form of the residential area. The proposal would harm the landscape quality of the area contrary to Policy DM24 and would be contrary to the aims of Policy ST3 in protecting the countryside outside settlement boundaries.

Conclusions

11. The recent adoption of the Local Plan and the fact that a 5 year supply of housing land has been so recently demonstrated has changed the planning balance significantly since the grant of permission at number 37 Orchard Road, or at 9 and 10 Range Road, as referred to by the Council. Whilst the site should be considered as previously developed land, and the housing figures do rely on windfalls, the effect on the character and appearance of the area is such that no exception should be made in this case for the development as proposed, to the settlement strategy in Policy ST3. The proposal would cause harm to the landscape setting of the existing residential area, and not conserve the beauty of the countryside. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

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Appeal Decision

Inquiry held on 17 and 18 October 2017

Site visit made on 17 October 2017

by **Helen Hockenhull BA(Hons) B.PI MRTPI**

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

Decision date: 23 November 2017

Appeal Ref: APP/V2255/W/17/3170533

Land at Swale Way, East Hall Farm, East Hall Lane, Sittingbourne, Kent, ME10 3TJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Trenport Investments Limited against Swale Borough Council.
 - The application Ref 16/505280/OUT is dated 20 June 2016.
 - The development proposed is residential development (up to 33 dwellings) and open space; including associated access (vehicular, cycle and pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.
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Decision

1. The appeal is allowed and planning permission is granted for residential development (up to 33 dwellings) and open space; including associated access (vehicular, cycle and pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development on land at Swale Way, East Hall Farm, East Hall Lane, Sittingbourne, Kent ME10 3TJ in accordance with the terms of the application, Ref 16/505280/OUT, dated 20 June 2016, subject to the conditions in the attached Schedule.

Application for costs

2. At the Inquiry an application for costs was made by both the appellant and the Council. These applications are the subject of separate Decisions.

Procedural Matters

3. The appeal was made because of the Council's failure to determine the planning application within the prescribed period. The Council has advised that if it had determined the application they would have refused it on the grounds that the proposed development fails to make any contribution towards the provision of a Neighbourhood Centre use, specifically a convenience shop, to the detriment of the social well-being of the residents of Great Easthall estate and that the applicant has failed to adequately demonstrate that the provision of a convenience shop is not a viable proposition for the application site. The development would therefore be contrary to Policies C1 and SP1 of the adopted Local Plan 2008 and the Great Easthall Development Brief Review 2009. It would also conflict with paragraphs 7, 14, 69, and 70 of the National Planning

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Policy Framework (the Framework) and Policies CP5 and CP6 of the emerging Bearing Fruits 2031: Swale Borough Council Local Plan.

4. Since the commencement of the appeal process, the Bearing Fruits 2031 Local Plan was adopted on 26 July 2017, superseding the 2008 Local Plan. I therefore consider the proposed development against the policies in the newly adopted Local Plan.
5. After the submission of the Proofs of Evidence from both main parties, and following further advice from their retail consultants, the Council agreed at a meeting of the Planning Committee on 12 October 2017 that it would not defend its case at this appeal. I have therefore determined the appeal on the basis of the appellant's evidence and that of interested parties.
6. The appeal proposal is in outline with all matters reserved for later approval except for the matter of access. It was confirmed that the submitted parameters plan is for indicative purposes only and I have considered it accordingly.
7. A signed and completed planning obligation by way of an agreement made under section 106 of the Town and Country Planning Act 1990 (s106) was submitted at the Inquiry. The obligation related to the provision of affordable housing, financial contributions towards primary and secondary education, library facilities, healthcare, refuse and recycling facilities, the maintenance of open space and the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy.
8. The Inquiry sat over 2 days, 17 and 18 October 2017. I undertook an unaccompanied site visit before the start of the Inquiry and a further unaccompanied visit on 17 October when I viewed the site and walked to the nearest local convenience store in Murston. As requested by interested parties, I also visited The Meads residential estate in Sittingbourne to view the local centre.

Main Issues

9. Accordingly in light of all that I have read and heard, I consider that the main issues in this case are as follows:
 - whether the development of the site as a neighbourhood centre as envisaged in the Great Easthall Development Brief Review Oct 2009, specifically a convenience shop, would be a commercially viable proposition;
 - the effect of the proposal on the social well-being of the local community and the promotion of sustainable travel choices in line with national and local planning policies.

Reasons

Policy Context

10. The appeal site forms an area of vacant land of approximately 1.4 hectares located near the entrance to the Great Easthall residential estate. In the now superseded Swale Borough Local Plan 2008, the site was included in a Proposed Housing Site allocation. In the new Bearing Fruits 2031 Local Plan the site is unallocated, though lies within the built up area boundary of

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Sittingbourne. Local Plan Policy ST3 outlines the Swale Settlement Strategy with Sittingbourne being the primary urban focus for growth. The Policy permits development on previously developed land in the defined built up area boundaries and on sites allocated by the Local Plan. I am advised by the appellant that the appeal site is partly previously developed, the western part of the site formerly occupied by a dwelling, now demolished as part of the wider residential development.

11. As the appeal site is now unallocated, the appellant has put forward two potential approaches in terms of the decision making framework in this case. Either the development is considered to accord with the development plan, in particular the settlement strategy in Policy ST3 or alternatively, the development plan could be considered to be 'silent', as it provides no policy guidance for an unallocated site. However it seems to me that the Local Plan is not 'silent' in providing policy guidance for development in the urban area, that is the role of Policy ST3. Bearing in mind the sites context as part of the Great Easthall residential development, and the fact that it is partly previously developed, I consider the principle of development would accord with the overall settlement strategy of the development plan.
12. Policies CP5 and CP6 of the Local Plan are referenced in the Council's suggested reason for refusal. Policy CP5 relates to Health and Wellbeing and states the intention to bring forward accessible new community services and facilities, including health facilities and to safeguard existing community services and facilities where they are viable or can be made so. Policy CP6 states that the Council will work with developers and other public agencies to identify deficiencies in infrastructure and that development proposals will deliver timely infrastructure and safeguard existing community facilities and services again where they are viable or can be made so. Neither of the above policies or their supporting text refers to retail uses, though these uses are not expressly excluded. That being said in broad terms I consider that a retail use, specifically a convenience store, can provide a form of infrastructure contributing to the social well-being of a community. I shall conclude further on these policies when I have considered the issue of viability.
13. A further relevant material consideration in this case is the East Hall Farm Development Brief adopted in 2003 and reviewed in 2009 which sets out the overall framework for the future development of the Great Easthall estate. The original Brief allocated the majority of the appeal site for residential uses with shops to be provided at the southern edge of the site. Other community uses were to be provided to the south of the appeal site on the other side of the access road. The 2009 Review document however allocated the whole of the appeal site together with the land to the south for neighbourhood centre uses including a community hall (now completed) and a medical centre which I am advised is no longer going to be constructed. I am also informed that the primary school proposed is also not going to be pursued by the Education Authority, and the site reserved for this use now has planning permission for residential development.
14. The appellant has argued that the weight to be afforded to these briefs is affected by their age and the fact that, as explained above, neither the school nor medical centre are now taking place. Whilst I acknowledge this to be the case, I consider they remain material as they provide a vision and guidance for the development of the estate as a whole.

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Viability

15. Since the preparation of the Development Brief for the Great Easthall estate in 2003 and the Review in 2009, there has been significant change in the retail sector. The recession has affected economic confidence, structural change has taken place with fewer large stores being built, and the increased use of the internet has altered the way people shop.
16. The appellant provided an assessment of the Viability of a Neighbourhood Centre as part of the consideration of the planning application. This document primarily gave consideration to the viability of a neighbourhood centre, with an anchor foodstore and supporting retail units, though it also made reference to the viability of a neighbourhood convenience store.
17. There are a number of factors which would affect the viability of a convenience store on the site. Whilst I acknowledge that the site is located at the entrance to the Great Easthall estate and would therefore be passed by residents as they enter or leave the residential area, I note that the estate is effectively located at the end of a cul de sac. This position would be rectified by the delivery of the Sittingbourne Northern Relief Road which would extend Swale Way to the A2. However the implementation of this road is uncertain. Whilst land for this purpose is safeguarded in the Local Plan, no funding for the scheme is currently identified. In these circumstances, the location of the site reduces the availability of passing trade.
18. The appellant's retail witness Mr Alsop advised at the Inquiry that in his experience the larger grocery retailers normally required a catchment of around 20-25,000 people to support a convenience store. In relation to the appeal site, the submitted Viability Assessment identifies an 800 metre catchment area, this distance being considered to be the maximum walking distance for residents. A population of just over 5,700 people is identified. The appellant confirmed that this figure takes account of the likely increased population from the currently undeveloped parts of the estate.
19. As the appeal site lies near the edge of the residential area, a significant part of the potential 800 metre catchment area encompasses the proposed employment area of Eurolink V to the east and the existing employment area to the north. This means that there is a lower resident population to support a convenience store than would be the case if the surrounding catchment was predominantly in residential use. Whilst I accept that employees in the employment areas may make use of a local convenience shop particularly at lunchtime, I have been presented with no evidence of how much expenditure this would bring. Whilst clearly there would be some, I have taken account of the fact that many employees may bring what they require from home and spend in their local areas. In any event there is always a potential risk that businesses may close so that this expenditure cannot be assured in the long term.
20. The submitted Viability Assessment also estimates convenience expenditure in the Great Easthall catchment¹ up to 2021. The analysis suggests a very slight increase in 'Top Up' spend, expenditure that would normally be associated with a small convenience store, of £77,000 over this period. As the projected

¹ Great Easthall Assessment of Viability of Proposed Neighbourhood Centre, June 2016, Table 4 Page 41

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increase in expenditure is low, I consider that it would be unlikely to encourage a retail investment.

21. A further consideration is that the catchment area would overlap with that of the existing food store in Murston. There would therefore be competition for convenience goods spend. The Murston store is close to the primary school so that residents may well find it more convenient to shop there when they are dropping off and picking up children. It may also be equal or closer in walking distance for some residents living at the western edge of the estate. This would form a further factor affecting the potential viability.
22. I have had regard to the eight case studies of neighbourhood centre developments provided by the appellant. These relate to different scales of residential development, with different locations and contexts. The example in Abbotswood, Romsey is of a similar size to the Great Easthall estate, around 900 homes. However it is more accessible, located at a crossroads with good connectivity to both Romsey and surrounding villages. Whilst these other case studies are not completely comparable to the appeal site, and it is difficult to draw clear conclusions from them, they give an indication of the factors that a retail developer would consider before deciding to invest, namely good accessibility and the potential catchment area.
23. It is an accepted approach with regard to the assessment of site viability, that a marketing exercise should be undertaken to assess the likely interest for the use proposed. In the appeal case, it is significant that a neighbourhood centre on the appeal site was granted reserved matters permission in 2007. The developer at the time tried over a period of around 9 years to gain interest in the scheme but was unsuccessful and in 2015 went into liquidation.
24. The site was marketed in preparation for an auction in December 2015. The marketing information advertised the site as a commercial opportunity with a lapsed neighbourhood centre permission. Reference was made however to the fact that subject to planning permission, the site could be suitable for alternative residential or commercial development. I am advised that, apart from the appellant, there was little interest in the site at the auction.
25. There was some discussion at the Inquiry with regard to whether the site was marketed as a neighbourhood centre rather than as an opportunity for a stand-alone convenience store. However it appears to me that the marketing information recognised the potential for a range of opportunities for the site and was not exclusively for a neighbourhood centre proposal.
26. I have also paid particular regard to the outcome of the appellant's approaches to a number of retail operators to gauge their potential interest in the site. One of the larger grocery operators stated that they were not looking to open any new stores. Others provided feedback that they were not interested because of the sites location on the edge of the town, the demographics and the lack of custom in the catchment area, the sites cul de sac location and lack of proximity to an arterial road reducing the possibility of passing trade.
27. Unfortunately no response was received from smaller convenience store retailers. Interested parties have questioned whether this indicates a lack of interest or not. However the site has been ear marked for a neighbourhood centre with a convenience store for over 10 years. Retail operators would have

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been aware of the opportunity and I consider that if they had been interested they would have made an approach to the landowner at some stage.

28. No evidence has been provided with regard to independent retailers, though I accept this would be more difficult to achieve. The appellant brought my attention to the Association of Convenience Stores Local Shop Report 2017². This indicates that 74% of convenience stores are run by independent retailers and nearly the same percentage are funding investment from their own reserves. I consider that such level of personal investment would be more likely where there is a clearly viable opportunity with the lowest level of risk.
29. The Local Shop Report also records the rise in Community Shops over the last 10 years. This option was suggested by the Council as a possible way forward, provided through an extension to the new community hall, funded by a financial contribution from the appellant. However I understand that this is no longer a viable option due to a covenant on the land preventing retail use which the landowner has refused to remove. In any event I am aware of a lack of community support for this proposal.
30. Interested parties suggested at the Inquiry that, if a small convenience store were to be built, an operator may come forward later. The store could even be designed so that if the opportunity was not taken up, then it could revert back to a residential dwelling. There would clearly be a level of risk for the appellant if this option were to be taken up, bearing in mind the current evidence of viability. In any case it is not my role to consider alternative proposals; rather I have to determine the acceptability of the scheme before me.
31. I acknowledge the communities desire to have more facilities in particular a local convenience store; however such a facility must be viable in order to succeed. The need for viability was clearly recognised in the Development Brief for the estate. I consider it is significant that the originally envisaged health centre and primary school to serve the community at Great Easthall are no longer taking place. Their presence would have contributed to the viability of a retail use.
32. In conclusion, taking account of all the above factors, I am satisfied having regard to the evidence in this case, that a neighbourhood centre use, in particular a local convenience store, would be unviable on this site.
33. Turning to Policies CP5 and CP6 of the Local Plan, whilst they both aim to provide community facilities and infrastructure, they recognise the need for such provision to be viable. Accordingly I conclude that the appeal scheme would not conflict with these policies.

Social well-being and sustainable transport

34. The Framework in Section 8 looks at promoting healthy communities. The document advises that planning policies and decisions should aim to achieve places which promote the opportunities for meetings between members of the community including through the provision of strong neighbourhood centres. Policies and decisions should also plan positively for the provision of community facilities such as local shops³. Whilst the community hall that has recently been completed provides a place for social interaction for the local community,

² Sophie Lee CBRE Proof of Evidence Appendix 2

³ NPPF paragraphs 69 and 70

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I acknowledge that a local convenience store would contribute to the establishment of a focal point and a sense of community.

35. However I must also have regard to paragraph 173 of the Framework which advises that in pursuing sustainable development careful attention should be given to viability and costs. Whilst further facilities for the community of Great Easthall would accord with the vision of the Development Brief they must be shown to be viable.
36. The putative reason for refusal argues that the development of the site for housing would lead to residents being more likely to travel by car to meet their day to day shopping needs to the detriment of promoting sustainable forms of travel. It appears to me that there are two issues here, firstly the accessibility to local facilities of the appeal site for future residents and secondly, if a convenience store is not built on the site, the impact that this would have on promoting sustainable means of travel for existing residents.
37. On my site visit I walked to the closest small convenience store in Murston, approximately one kilometre away. There are a number of possible pedestrian routes through the estate. My walk took approximately 12 minutes taking one route and around 13 minutes on the return journey taking a different route. I noted that whilst all routes were lit, the quality of the surface differed. Some routes may be less suitable for pushchairs or wheelchair users; however a number of alternatives would be available. Many of the pedestrian routes also provide off road cycle routes.
38. The appellant's Viability Assessment considered that a reasonable maximum walking distance for shopping was around 800 metres, about 10 minutes' walk. This figure is taken from the Department of Transport publication Manual for Streets.⁴ The document also advises however that this distance is not an upper limit. Whilst the convenience store in Murston is at a slightly greater distance from the appeal site at around a kilometre, I consider that this is still a walkable distance for most residents.
39. There is a bus stop located on the site frontage on Great Easthall Way providing a half hourly service to Sittingbourne. This service runs through the Great Easthall estate and stops at the convenience store in Murston, with a travel time of around 5 minutes. I note that the bus service does not operate late in the evening or on Sundays. However it does provide a reasonable service for those who wish to undertake shopping trips during the week and on Saturdays.
40. In light of the above I consider that the appeal site is in an accessible location and provides a choice of travel options by walking, cycling and public transport.
41. I now turn to the matter of whether residents would be more likely to travel by car to meet their day to day shopping needs to the detriment of sustainable means of travel. I accept that the development of the site for a convenience store would have provided a more convenient shopping option for some residents encouraging them to walk or cycle instead of using the car. However I have already found that the site is in an accessible location and the residential estate as a whole has good off road pedestrian and cycle routes together with public transport providing a choice of alternative transport means

⁴ Manual for Streets Page 45 Paragraph 4.4.1

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to the car. Furthermore, as a convenience store does not currently exist on the site, the appeal proposal for up to 33 dwellings would have no effect on existing travel patterns.

42. Overall therefore, I conclude that the proposed development would not result in residents being more likely to travel by car and that the proposal would not conflict with the social and environmental objectives of sustainability.

Other Matters

43. Local residents have also expressed concern with regard to highway matters and the need for further local infrastructure such as schools and a health centre to serve additional residents.
44. Turning firstly to highway matters, the submitted Transport Statement considers the level of traffic that would have been generated by a neighbourhood centre compared to that of the proposed residential scheme. In so doing a significant allowance for linked trips is made. The conclusion is that the appeal proposal would generate an additional 25 two way movements in the morning peak and 32 in the evening peak. These net increases are small and would have little impact on the local highway network. The Highway Authority has raised no objection to the scheme and I am satisfied that a safe and suitable access can be provided to the site. I note that residents have expressed concern about existing on street car parking on the estate. I have no evidence before me to suggest that the submitted scheme would not provide adequate off road car parking for the proposed dwellings in line with the Council's guidance and standards.
45. With regard to the provision of a primary school and medical centre at Great Easthall, I have sympathy for resident's frustration that these have not been provided in line with the Development Brief. Such decisions have been made by the respective service providers. In order to mitigate the impact of additional residents should the appeal scheme proceed, financial contributions to support existing education and health facilities serving the estate are included in the section 106 agreement. I consider that the scheme would therefore be acceptable in this regard.
46. It is common ground between the parties that the Council can demonstrate a 5 year supply of deliverable housing land and therefore the relevant policies for the supply of housing are up to date⁵. The dwellings provided by the scheme would assist to boost the supply of housing in the borough in line with paragraph 47 of the Framework and contribute to delivering a wide choice of quality homes. It is proposed that four affordable dwellings would be provided as part of the development, meeting the Council's 10% policy requirement, which would contribute to the current shortfall in the borough.

Planning Balance

47. Paragraph 14 of the Framework states a presumption in favour of sustainable development which for decision taking 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 or

⁵ NPPF paragraph 49.

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demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole (the tilted balance).

48. In this case I have found that the development would accord with the overall settlement strategy of the development plan set out in Policy ST3. Furthermore I consider there is no conflict with Local Plan policies CP5 and CP6. Therefore the proposal would comply with the development plan and should be permitted unless there are any other material considerations which indicate otherwise⁶.
49. I empathise with the communities wish to see more facilities on Great Easthall estate, in particular a convenience store, as originally planned in the 2003 and 2009 (Review) Development Briefs. I acknowledge that such provision would to an extent promote the social well-being of the community. However the Briefs recognise that retail uses (and other uses) need to be commercially viable. Based on the evidence before me I have found that this would not be the case. Accordingly I find no conflict with these documents.
50. There are no environmental matters such as landscape, ecology, flooding, drainage, noise or air quality which weigh against the scheme. Furthermore I have found that the development would provide a safe and suitable access and that the site is in an accessible location. The development would also contribute to the supply of housing in the borough and provide a small number of affordable homes.
51. As I have identified no other material considerations which would indicate that the development should not be approved in accordance with the development plan, I conclude that the appeal should be allowed.
52. In light of the above it is not necessary for me to comment on the further considerations outlined in paragraph 14 of the Framework.

Planning Obligation

53. The s106 obligation secures the provision of affordable housing and financial contributions towards primary and secondary education, library facilities, healthcare, refuse and recycling facilities, the maintenance of open space and the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy.
54. The Council has provided a schedule setting out justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.
55. The provision of affordable housing is required to meet the requirements of Local Plan Policy DM8. Kent County Council has provided justification for the education contribution and has identified the recipient schemes at Murston Primary School and Westlands Secondary School. Similar justification has been provided for the library contribution to fund further book stocks for additional borrowers. These contributions are supported by Local Plan Policy CP6.
56. The contribution towards health care provision is needed to mitigate the additional pressure on local doctor's surgeries, in particular the Chestnut

⁶ S 38 (6) of the Planning and Compulsory Purchase Act 1990.

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Practice, as a result of an increase in patients. It is also necessary to meet the requirements of Local Plan Policies CP5 and CP6. The obligation on the developer to provide refuse and recycling facilities for the proposed dwellings is also necessary to ensure adequate provision is put in place in line with Local Plan Policy CP6 and the Council's Developer Contributions Supplementary Planning Document 2009.

57. With regard to open space the s106 agreement makes provision for either the management of on-site open space to be undertaken by the Council or alternatively by a Management Company. In the event that the Council is to take on this responsibility a financial contribution is required. This is supported by Local Plan Policy DM17.
58. I consider that the above contributions to education, libraries, health care, refuse and recycling and the maintenance of open space are directly related to the development, necessary to make the proposal acceptable in planning terms and reasonably related in scale and kind to the housing proposed. The Council's schedule also provides evidence that the number of contributions in relation to each of the above matters does not exceed four. I am satisfied that the above contributions meet the requirements of regulation 123 of the CIL Regulations. They therefore meet the statutory and policy tests and I have taken them into account in my decision.
59. Finally the s106 includes an obligation to contribute towards the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. At the Inquiry the Council explained that this contribution would be used to fund the maintenance of the Special Protection Area (SPA), a matter which would not involve the provision of infrastructure as defined under regulation 123 of the CIL Regulations. Accordingly the pooling restrictions of regulation 123 would not apply. I find this contribution to be necessary in order to mitigate the potential effects of the proposal upon the SPA and to meet the policy test of paragraph 204 of the Framework. I therefore give weight to this in my decision.

Conditions

60. I have had regard to the draft conditions agreed by the Council and the appellant. These were discussed at the Inquiry. Where necessary I have amended the wording in the interests of consistency and precision.
61. Conditions 1 to 3 are the standard reserved matters conditions. Condition 4 defines the approved plans in particular the access proposals and the Development Parameters. These are necessary to ensure that a satisfactory access to the site is secured and that the development proceeds in accordance with an agreed broad framework for development.
62. Condition 5 is required to ensure that the reserved matters submission includes details in respect of levels having regard to the sloping nature of the site. In the interests of achieving good design and setting out broad principles for the scale of the development condition 6 is necessary.
63. In order to ensure a programme of archaeological investigation and recording Condition 7 is required. Conditions 8, 9, 10 and 11 are necessary to ensure that appropriate investigations with respect to on site contamination and gas emissions are undertaken and mitigation measures provided to safeguard the

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health of future residents. In the interests of preventing pollution and flooding and to ensure the site is appropriately drained, condition 12 is required.

64. Condition 13 requires the submission of a scheme of dust suppression whilst Conditions 14 and 15 control hours of working. These conditions are necessary to protect the living conditions of existing and future residents. In the interests of highway safety condition 16 is required to ensure the provision of car parking, loading/unloading facilities and manoeuvring space for construction vehicles. Condition 17 requires measures to be agreed to prevent the deposit of mud on the highway and is necessary to ensure highway safety and protect the environment.
65. Condition 18 requires the submission of details for the proposed estate roads and footways including verges, visibility splays, parking, gradients and drainage. I consider this to be necessary to ensure roads are constructed and laid out in a satisfactory manner. Condition 19 requires the submission of a further noise assessment to respond to the detailed layout submitted for approval at reserved matters stage. This is necessary in order to protect the living conditions of future residents.
66. The main parties also suggested a number of other conditions relating to hard and soft landscaping, external materials, measures to promote and encourage biodiversity, sustainable construction techniques including the provision of water conservation and recycling, renewable energy production and the provision of equipment to enable the provision of Broadband to the proposed dwellings. As the appeal scheme is in outline with all matters reserved with the exception of access, I do not consider that these conditions are necessary at this stage. I therefore do not impose them.

Conclusion

67. For the reasons given above and having regard to all other matters raised, I allow this appeal.

Helen Hockenfull

INSPECTOR

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Miss Megan Thomas of Counsel	Instructed by Swale Borough Council Legal Services Department
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She called

Mrs Emma Eisinger ⁷ BA (Hons) MRTPI	Senior Planning Officer Swale Borough Council
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FOR THE APPELLANT:

Mr Andrew Fraser-Urquhart of Queen’s Counsel

He called

Mr Malcolm Alsop BA (Hons) DipTP MRTPI FRGS	Director/Principal Alsop Verrill Planning
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Mr Richard Lewis MA(UD) BA MRTPI	Senior Associate Vincent and Goring
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INTERESTED PERSONS:

Trevor Grain	Resident
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Cllr Mike Baldock	Elected Member of the Council
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⁷ Provided no oral evidence , appeared in regard to the planning obligation and conditions only

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DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Statement on behalf of the appellant
2. Executed section 106 agreement dated 16 October 2017
3. Costs application with supporting emails submitted by the Council
4. Closing submissions of the appellant
5. Outline costs application from the appellant
6. The Council's response to the appellant's cost application

DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Amended list of conditions dated 19 October 2017.

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SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall be carried out in accordance with the following approved drawings: Drawing No. ITL11359-SK-002 Rev A - Existing Roundabout Site Access Plan and Drawing No. 5127/006c - Development Parameters.
- 5) The details referred to in condition (1) shall include cross-sectional drawings through the site of the existing and proposed site levels. The development shall be completed strictly in accordance with the approved levels.
- 6) The layout for the reserved matters application pursuant to condition (1) shall include open space/open land and the connecting cycle/footway as shown within the application site on the Development Parameters plan 5127/006c. In addition, the maximum building height shall not exceed 3 storeys with maximum ridge height of 13 metres.
- 7) No demolition/development shall take place on areas not previously excavated for brickearth (as identified in green on the plan entitled "Figure 17" prepared by CgMs submitted on 18th November 2016 to accompany the document entitled - Cultural Heritage Desk Based Assessment (Cgms Consulting)) until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 8) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the

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local planning authority of works to deal with this unsuspected contamination.

- 9) Upon completion of the works to remediate contaminated land under condition (8), and before any part or agreed phase of the development is occupied, a closure report shall be submitted to the local planning authority which shall include details of the remediation works undertaken, with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- 10) Prior to the commencement of development hereby approved, a detailed scheme for the investigation, recording and remediation of gas shall be submitted to the local planning authority for approval in writing. Such a scheme shall comprise:
 - i. a risk assessment including details of how on-site monitoring during the investigation took place. The investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a methodology that complies with current best practice. The details of this consultant/contractor shall be provided.
 - ii. detailed proposals in line with current best practice for gas protection measures to be incorporated within the development.

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

- 11) Prior to the first occupation of the dwellings hereby approved, a closure report to include full details of the gas protection works carried out at the site (as directed by condition 10), including relevant certification to demonstrate this, shall be submitted to the local planning authority for approval in writing.
- 12) Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters including discharge rates and attenuated volumes, shall be submitted to and approved in writing by the local planning authority. This shall include full details for the Sustainable Urban Drainage System and how it will be implemented, managed and maintained. The approved details shall be implemented before the first occupation of the development hereby permitted and managed and maintained in accordance with the approved details.
- 13) Prior to the commencement of development hereby approved, a programme for the suppression of dust during the construction of the development shall be submitted to and approved in writing by the local planning authority. The measures shall be employed throughout the period of construction.
- 14) 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:-

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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.

- 15) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:-
Monday to Friday 0900 – 1700 hours unless with the written approval of the local planning authority.
- 16) During construction of the development space shall be provided on site, in a position previously approved in writing by the local planning authority to enable all employees and contractors vehicles to park, load and off load and turn within the site.
- 17) Measures that have first been approved in writing by the local planning authority shall be taken during the period of construction to prevent the deposit of mud and/or other debris on the public highway.
- 18) The proposed estate road, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture, as appropriate, 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 and in accordance with a schedule of house completions and/or an implementation programme for the approved works, also to be submitted to the local planning authority for approval in writing.
- 19) No development beyond the construction of foundations shall take place until a Noise Assessment, that specifically responds to the layout of the housing development pursuant to condition (1) above, and makes recommendations for appropriate mitigation measures, has been submitted to and approved in writing by the local planning authority. The approved measures shall be completed prior to the first occupation of the dwellings hereby approved and retained thereafter.



Costs Decisions

Inquiry held on 17 and 18 October 2017

Site visit made on 18 October 2017

by **Helen Hockenhull BA(Hons) B.PI MRTPI**

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

Decision date: 23 November 2017

**Costs application in relation to Appeal Ref: APP/V2255/W/17/3170533
Land at Swale Way, East Hall Farm, East Hall Lane, Sittingbourne, Kent
ME10 3TJ**

(Costs Application A)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Trenport Investments Ltd for a full award of costs against Swale Borough Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of its decision within the prescribed period on an application for outline planning permission for residential development (up to 33 dwellings) and open space; including associated access (vehicular/cycle/pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.

**Costs application in relation to Appeal Ref: APP/V2255/W/17/3170533
Land at Swale Way, East Hall Farm, East Hall Lane, Sittingbourne, Kent
ME10 3TJ**

(Costs Application B)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Swale Borough Council for a partial award of costs against Trenport Investments Limited.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of its decision within the prescribed period on an application for outline planning permission for residential development (up to 33 dwellings) and open space; including associated access (vehicular/cycle/pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.

Decision

1. Costs applications A and B are both refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, relating to process; or substantive, relating to the issues arising from the merits of the appeal.

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3. Both the appellant and the Council made their applications for award of costs in writing. The Council's response was also put in writing whilst the appellant's response was given orally at the Inquiry.
4. Costs application A is made by the appellants on a substantive basis. It is submitted that the Council acted unreasonably for three reasons. The first reason relates to the Council preventing or delaying development that should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations. The second reason is in regard to the failure to provide evidence to substantiate each reason for refusal on appeal. Finally the third reason relates to the Council providing vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis. The appellant considers that the Council produced no evidence to contradict the case that any retail use would be unviable on the site. The Council's retail consultant made no suggestion that any form of retail was viable but stated the view that the appellant had not provided sufficient evidence from a range of retailers, having only presented a letter from one operator. Moreover the fact that the Council chose to withdraw its case supports the fact that there was no evidence to sustain their position.
5. Costs application B is made by the Council on a procedural basis as they consider that the appellant delayed in providing information relevant to the Council's purported reason for refusal. If this information had been provided earlier then the Council would not have had to prepare proofs of evidence and legal costs would have been reduced. A partial award of costs is therefore sought.

Costs application A

6. The original planning application was presented to the Council's Planning Committee on 8 December 2016 with an officer recommendation for approval. The Members disagreed with Officers and questioned the viability of a single convenience store in light of the evidence put before them.
7. In line with the Council's procedures, the decision was deferred at the December 2016 Committee. This enabled Officers to obtain further advice from the Council's retail consultant CBRE. This fed into the Officer report to the Committee on 2 March 2017 and led to a recommendation of refusal. The appellant decided to appeal against non-determination before the Committee meeting took place.
8. The Members were made aware of the Marketing Statement prepared by the appellant, the Viability Assessment and the correspondence from a grocery retailer. It was a matter of judgment for the Council whether or not it considered the evidence presented to it was sufficient to demonstrate lack of commercial interest in the site and a lack of viability. It was not unreasonable for the Members to want to be assured that a convenience store would not be viable bearing in mind the aspirations of the Development Brief for the estate and residents' concerns with regard to the lack of facilities.
9. I acknowledge that CBRE in their report to the Council did not conclude that a local convenience store was viable rather their view was that it had not been adequately demonstrated that such a store would not be viable. It is common practice for local planning authorities to request marketing exercises when a

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change of use of land is being proposed in order to demonstrate the lack of viability of the original use. The Council had before it a letter from just one retailer. CBRE concluded that this was insufficient and whilst it was clearly an indication, it did not necessarily show that all retailers would take the same view. It is also notable that CBRE recommended that alongside the main grocery retailers, that the appellant also explore the possibility of a local convenience store operated by an independent retailer. Having regard to the above advice, I do not consider that the Council acted unreasonably in being minded to refuse the application.

10. The appellant has also suggested that the Council's action in withdrawing its case two working days before the Inquiry provides further proof that it had no evidence to sustain its case. However the Council was not in a position to do this until after the exchange of proofs, having had sight of the additional evidence provided by the appellant.
11. In allowing this appeal, I have found that that the appeal proposal would accord with the development plan. Whilst the Council came to a different view, this was a matter of judgment based on the information available to it at that time. The Council had concerns that the lack of viability had not been adequately demonstrated and I consider that, whilst it subsequently withdrew its case, its proofs of evidence substantiated its position. I consider this was clear and not vague, and did not include generalised or inaccurate assertions about the proposal's impact. Furthermore at the time that the Council considered the planning application, the evidence from potential retailers was very limited. It was not clear at that time that the development was acceptable and therefore the Council did not prevent or delay a development that should have been permitted.
12. In conclusion I do not consider that the Council acted unreasonably with regard to this matter. The appeal would have proceeded in any event and therefore the appellant has not incurred unnecessary expense. An award of costs for costs application A is not justified.

Costs application B

13. Following the Planning Committee meeting on 2 March 2017 it was clear that the Council considered that the appellant had failed to adequately demonstrate that a convenience shop was not a viable proposition. Further evidence was requested in late April 2017. On the 10 May 2017 the appellant emailed the Council agreeing to provide the further information and advising that it would get back to the Council as soon as it could.
14. Appendix 6 of Mr Lewis's proof, illustrates that the last response from the larger grocery retailers was received by the appellant on 20 April 2017. No response had been received from the smaller retailers approached and so a chase up email was sent on 5 June 2017. I consider that it was reasonable for the appellant to want to wait to respond until it had gathered the full information requested by the Council. Even allowing some time for a reply to the June follow up email, a response to the Council would not have been possible until late June/early July. I consider it regrettable that the appellant did not provide the information at that time, though I accept that there was no requirement to do so.

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15. It is clearly good practice that parties try to reduce the areas of dispute between them in order to reduce the length of an inquiry, achieve a more efficient appeal process and reduce costs. An acknowledgment of this is made in Mr Lewis's email of 10 May 2017, providing evidence that the appellant was trying to work with the Council to achieve this.
16. The Council emailed the appellant on 27 July 2017 requesting a response by 16 August 2017. Mr Lewis did not reply until 5 September explaining that he had been on leave until 14 August 2017 and there were then difficulties in getting the team together in order for a response to be made. By the time Mr Lewis responded it was too late for any additional information to have been assessed by the Council and for its position to have been reviewed before the submission of the proofs of evidence. Even if the appellant had responded by 19 August 2017 as requested, it would still have been a very tight timetable for the Council to decide on the way forward and present a report to the Planning Committee seeking agreement not to defend the appeal before proofs had to be prepared.
17. In conclusion, having regard to the above, whilst I consider that the appellant had been tardy in not responding to the Council in a timely fashion, this did not amount to unreasonable behaviour. The Council's costs in respect to this appeal were therefore not unnecessarily incurred. Accordingly an award of costs for costs application B is refused.

Helen Hockenfull

INSPECTOR



Appeal Decision

Inquiry held between 26 and 29 September 2017 and closed on 11 October 2017

Site visit made on 29 September 2017

by **Nick Palmer BA (Hons) BPI MRTPI**

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

Decision date: 23 November 2017

Appeal Ref: APP/V2255/W/17/3172378

Land north of Canterbury Road, Dunkirk, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Simon Reynolds of Quinn Estates Limited against the decision of Swale Borough Council.
 - The application Ref 16/505118/OUT, dated 15 June 2016, was refused by notice dated 16 November 2016.
 - The development proposed is a mixed use development comprising up to 77 residential dwellings with associated commercial (B1) and retail (A1) units, hard and soft landscaping and associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is for outline permission with all detailed matters except for access reserved. An illustrative masterplan was submitted with the application and I shall consider that plan on the basis that it is illustrative of a possible scheme.
3. On 26 July 2017 the Council adopted its Local Plan (LP) entitled 'Bearing Fruits 2031: The Swale Borough Local Plan'. This supersedes the 2008 Local Plan policies that were referred to in the Council's decision. My decision shall be made on the basis of the relevant LP policies.
4. A signed Section 106 Agreement was submitted after the Inquiry sessions but before the Inquiry was closed and I shall take that Agreement into account.

Main Issues

5. From all that I have read, heard and seen I consider that the main issues in the appeal are:
 - i) the effect of the proposal on the character and appearance of the area, with specific reference to its effect on the landscape;
 - ii) whether or not the site is a suitable location for the proposed development having regard to the Council's settlement strategy; and
 - iii) whether or not the Council can demonstrate a five year supply of deliverable housing sites and the implications for planning policy.
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Reasons

Character and Appearance

6. Dunkirk is a small settlement, the built up area as defined in the LP covering linear residential development along Canterbury Road and Courtenay Road, which are at right angles to each other. Those two roads partially enclose a former World War 2 radar station which is a Scheduled Ancient Monument. The remaining mast is a grade II listed building. The appeal site is an open field to the east of the built up area and lies between the settlement and Bossenden Wood. To the south east of the site there is a small employment park and a small number of bungalows that are isolated from the main part of the settlement. Within the site there is an area of hardstanding which I saw on my visit is used for parking of lorries and trailers and storage of various materials. This area is adjacent to the road frontage and behind a hedge.
7. The proposed development would substantially occupy the open space between the built up area of the village, the employment park and Bossenden Wood. There is a timber yard between part of the eastern site boundary and the wood but the buildings and outside storage within that yard are small in scale and an open aspect towards the wood is maintained.
8. The landscape is predominantly wooded, the site and the settlement occupying an open break in the woodland. The landscape is designated an Area of High Landscape Value (AHLV) in the LP and is identified as being of value at the Kent level. In the Swale Landscape Character and Biodiversity Appraisal (2011) (LCA) the site falls within the Blean Woods West Landscape Character Area. The LCA describes the undeveloped nature and remoteness of the area and notes that the landscape forms part of one of the most extensive areas of semi-natural woodlands in the south-east of England. Thus the landscape is of value at the County as well as local levels.
9. The adjacent employment uses may affect the general tranquillity of the area and background noise from the A2 road may also have this effect. However the generally remote character would be altered by the proposal and the village would take on a more urban appearance. The proposal would substantially increase the size of the settlement and largely remove the open setting between the settlement and the wood. For these reasons the development would be highly intrusive in the context of the generally open and wooded landscape.
10. Two of the guidelines in the LCA are of particular relevance. One requires conservation of wooded fringes while another requires that development relates to the settlement pattern and that it protects the settings of settlements. Although the proposal would preserve an element of open land adjacent to the wood, this area would be minimal in relation to the scale of development proposed and much of that area is already occupied by the timber yard. The setting of the settlement would be harmed and the proposal would be out of scale with the settlement. For these reasons it would not accord with the LCA guidelines.
11. I acknowledge that there are limited public views into the site because of the built developments on Courtenay Road and Canterbury Road and the adjacent woodland all of which enclose the site. However the frontage would be opened up and the development would be prominent in views from Canterbury Road

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and when approaching on the slip road from the A2. Views of the development would also be obtained from the rear of the Courtenay Road properties and from that road in gaps between buildings. Views would also be possible from the footpath within Bossenden Wood, although those views would be filtered by intervening trees. The Parish Council has applied to the County Council for that path to be given the status of a public footpath. Although the proposal would have limited impact on longer distance views it would have significant impact on views in the immediate area.

12. The adjacent employment park is limited in extent and in terms of the scale of its buildings and structures. The warehouse occupied by Agrii is of significant size but the buildings are close to Canterbury Road and have only a limited effect upon the openness of the area between the village and the wood. The timber yard was approved recently but the scale of its operations is limited and controlled by conditions. Permission has also recently been granted for external storage racking at Agrii but this would be contained by the existing adjacent buildings.
13. The radar mast and the area of the former radar station are designated heritage assets. The Council's reasons for refusal were not based on any harm to the settings of those heritage assets and I see no reason to disagree. The mast is a large structure in the context of its predominantly open surroundings and the limited scale of the village. Its significance derives from its historic interest and as such it is of value rather than detracting from the character and appearance of the area.
14. I take into account the proposed new planting which would help to soften the appearance of the development and to blend it into its surroundings. However neither this nor a condition limiting the height of the buildings would be sufficient to overcome the harm that I have identified.
15. Paragraph 109 of the National Planning Policy Framework (the Framework) requires protection and enhancement of valued landscapes. For the reasons given the landscape is of value both locally and in a wider context and the proposal would unacceptably harm the character and appearance of the area.
16. In coming to this view I have taken into account the allocation in the LP of a site for residential development at Bull Lane, Boughton. Although that site will extend the built up area and is within the AHLV it is much smaller than the appeal site and it adjoins a much larger village and for these reasons is not directly comparable to the proposal.
17. The overall requirement of Policy DM24 of the LP is to protect the value and character of the Borough's landscapes. Part C of that policy requires all development to have regard to the guidelines in the LCA. I have found that two of those guideline requirements would not be met. Although the policy allows for adverse landscape impacts to be balanced against social and economic benefits, for the reasons given the proposal would not accord with policy DM24 of the LP.

Location

18. Policy ST3 of the LP sets out the policy requirements in terms of the settlement strategy. Boughton, which is about 1 km away from the site, is defined as a Rural Local Service Centre in Table 4.3.1 of the LP and Dunkirk is a lower order

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settlement ('other villages with built-up area boundaries'). The policy focusses development on the urban centres while Rural Local Service Centres are identified as providing the tertiary focus for growth. In other villages such as Dunkirk, development will be permitted within the built-up area boundaries. Outside those boundaries development is restricted under policy ST3. The appellant agrees that the proposal would not accord with that policy.

19. Boughton has a range of local facilities that include a primary school and village hall/library, restaurants, a public house and retail facilities including a post office. In Dunkirk there is a village hall and employment opportunities while just outside the village there is a public house and a farm shop. Regular bus services run along the main road to Canterbury and Faversham, each destination being about 5 miles away. I note the Parish Council's concerns about the lack of medical facilities in the area but I nevertheless find that the site has a reasonably good level of accessibility to services and facilities by sustainable means of transport. Thus, while undoubtedly residents would use the car to a great extent, other travel options would be available.
20. Paragraph 4.3.23 of the LP describes the primary purpose of policy ST3 as being to protect the open countryside from isolated and/or large scales of development. The paragraph goes on to say that some minor development outside the built-up area boundaries may be essential for the social, economic or environmental health of a community. The proposal would include a shop and business floor space both of which would clearly benefit the local community in terms of increasing local provision and reducing the need to travel. However the development as a whole would far exceed the scale of development envisaged in the LP as being acceptable in this location. Although I have found that the development would be accessible by sustainable means, for these reasons the proposal would not accord with the settlement strategy as set out in the LP.
21. While there would be benefits in terms of strengthening the community the development would overwhelm the limited scale of the existing settlement. For these reasons, and given the clear and undisputed conflict with policy ST3, I conclude that the site is not a suitable location for the proposed development. The proposal would not accord with policy ST1(4) of the LP which requires development to accord with the settlement strategy.

Housing Land Supply

22. Although the LP has only recently been adopted, the Statement of Housing Land Supply that was before the Local Plan Inspector was that of 2015/16. A more recent Statement (SHLS) for 2016/17 is now available. The housing land supply at 5.4 years remains the same as in the 2015/16 Statement. The identified surplus of 0.4 years' worth of housing supply equates to 340 dwellings. The Council explained that although there have been slippages in timings of delivery for some sites these have been compensated by increased rates of provision on other sites. The appellant has questioned a number of assumptions that are made in the SHLS. These concern the anticipated rates of housing delivery, lapses of permissions and slippages. The trajectory rises steeply to a very high level of provision in year 5 in comparison to previous rates. In addition to these matters the appellant questions the Council's method of accounting for demolitions in its calculation. I shall examine each of these points in turn.

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Rates of Delivery

23. The Strategic Housing Land Availability Assessment (SHLAA) assumed annual delivery rates per developer of 30 to 40 dwellings. This annual range is not disputed but the appellant questions the higher rates of delivery which have been assumed for a number of sites in the supply calculation. The Council explained that it has used information gained from developers and its knowledge of previous delivery rates on particular sites.
24. It is evident that higher numbers of developers have previously been involved in particular sites than was assumed by the Council in Appendix E of the SHLS. Nonetheless it is also evident that there have been wide variations in rates of delivery. For example at Iwade, 211 dwellings were completed by 3 developers in 2003/4 and 124 dwellings with 1 developer and a Registered Social Landlord more recently. There are other examples of completions of over 70 dwellings in one year by a single developer. Therefore evidence of past delivery rates does not support a rigid assumption of 30 to 40 units per year. In the annotated schedule included in the Statement of Common Ground the assumed delivery rates are supported by the information that has been provided on the number of developers involved. This is the case in respect of sites at East Hall Farm and Quinton Road in Sittingbourne for example.
25. Factory constructed units are intended at Rushenden Road, Milton Pipes and Istill Mill. The use of this type of construction supports higher rates of delivery at those sites. It was also agreed at the Inquiry that flatted development may deliver housing more quickly than conventional housing development. This type of housing would be provided at Fountain Street, Cockleshell Walk and The Bell Centre in Sittingbourne. Higher rates of delivery on those sites would be justified on this basis. I note that in the case of The Bell Centre, there may be detailed issues potentially relating to viability but the evidence in this respect is inconclusive. Although the appellant thinks that the annual delivery rate in years 4 and 5 should be adjusted it is not suggested that this site should be removed from the supply calculation.
26. The Council has produced correspondence from the owner of the site at Love Lane, Faversham to the effect that there is no litigation that would prevent the 90 dwellings in the housing supply from being delivered.
27. While I acknowledge that developers are often optimistic about their delivery assumptions, the Council has taken a cautious approach to those assumptions as provided in developers' annual returns¹. That caution covers both the annual numbers of expected rates of delivery and the timings of development. Where uplift from the SHLAA rates to 45 dwellings per annum has been assumed this has been justified on the basis that sites appear to be straightforward to develop and developers are in place. For these reasons I find that the Council's assumptions with regard to rates of delivery are reasoned and not overly optimistic.

Net Completions

28. The appellant has pointed out that in a number of cases new dwellings that are included in the supply calculation would entail demolition of existing dwellings.

¹ For example at Great Grovehurst Farm Sittingbourne, Stones Farm Sittingbourne, Plover Road Minster, Oare Gravel Works Faversham, High Street Newington, Froggnal Lane Teynham, Station Road Teynham, Thistle Hill Minster and land south-east of Iwade

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If the net figure were considered this would result in a loss of 140 dwellings from the supply.

29. The Council has explained that it records demolitions as and when they occur and that the housing supply figure is adjusted accordingly. Thus demolitions are included within the overall calculation of the housing supply requirement. The number of dwellings in question forms a small proportion of supply and if the 140 dwellings were discounted the Council would still have more than a 5 years' supply. However given that demolitions are accounted for in the supply calculation I find no need to discount those dwellings.

Lapses

30. Footnote 11 to paragraph 47 of the Framework states that *sites with planning permission should be considered deliverable until permission expires unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.* The Council has acknowledged in its 2016 Position Paper that there is risk of non-delivery particularly on small sites which have permission but where development has not commenced but no lapse rate has been applied to the calculation of housing supply. The viability of both allocated sites and those with permission has been taken into account in the SHLS. In instances where there may be viability issues with permitted sites the lead-in times have been adjusted to take this into account. There is no specific evidence before me to justify the removal of a certain percentage of permitted sites on grounds of viability, demand or phasing however.
31. National research which has been referred to by the appellant indicates that 10-20% of permissions do not materialise into a start on site. The three examples of applications to renew permissions which were provided by the appellant do not amount to lapses although the renewals may have resulted in delivery slippage. The Council advised that the question of whether a lapse rate should be applied was considered by the Local Plan Inspector. I find that there is a lack of substantive evidence to justify the application of a standard lapse rate. However if a 10% lapse rate were to be applied to all sites with planning permission this would amount to 176 dwellings which if removed from the supply would still leave a supply in excess of 5 years.

Slippage and Scale of Provision

32. The annotated schedule and the trajectory graph in the Statement of Common Ground illustrate the degree to which the delivery of major sites both allocated and with permission have slipped over the past few years. However the adoption of the LP will have provided greater certainty. Slippages over the last year which have resulted in losses from the 5 year supply have been compensated for by increased delivery from other sites. The projected peak in delivery in year 5 now stands at 1,773 dwellings compared to 1,699 in the trajectory that was examined as part of the LP evidence and as such does not differ greatly from that which was found to be sound.
33. Housing provision of more than 1,000 dwellings in a year has only been achieved once in the last 35 years and on this basis the appellant doubts whether delivery of 1,773 dwellings in a single year is realistic. Some 570 of

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those dwellings would be in Sittingbourne and the appellant questions whether the market could stand this level of provision in such a short space of time.

34. The effect of further slippage would only increase the peak in year 5 if not compensated for by greater delivery in earlier years. I recognise the appellant's concern in this respect but am reassured by the increased record of delivery over the past year and the certainty provided by the adopted LP. The sites which have been moved back in the trajectory appear to reflect a more cautious approach taken by the Council in its assumptions and this provides further reassurance.
35. Policy ST2 of the LP requires a review of the LP to be carried out and adopted by April 2022. This will consider necessary improvements to highway infrastructure and its effect on housing provision after that date. The Highway Authority and Highways Agency have confirmed that required highway improvements will not prevent the sites identified in the housing supply from coming forward. It is clear that there are no infrastructure constraints to the achievement of housing delivery in the next 5 years.

Housing Land Supply Overall

36. For the reasons given in the preceding paragraphs I find that the Council's housing land supply position as set out in the SHLS is reasonably robust. There is insufficient evidence before me to justify the application of a lapse rate to sites with permission but even if a rate of 10% were to be applied this would not result in the Council having less than a 5 years' supply.
37. The appellant has drawn attention to two discrepancies in the number of dwellings as applied for and those which appear in the supply calculation² which amount to 9 dwellings. If these were added to the 176 that would be lost as a result of a 10% lapse rate to permitted sites, the total of 185 would still result in a surplus of 155 dwellings.
38. The Government's consultation on 'Planning for the right homes in the right places' follows earlier consultation entitled 'Fixing our broken housing market'. Table 1 in the latest consultation document proposes that for plans adopted in the last five years, the new standardised method of calculating supply should be used when next reviewing or updating the plan. Limited weight can be given to the consultation proposals at this stage but in any case the standardised method would not apply on the basis of there being a recently adopted plan.
39. For these reasons I conclude that the Council can demonstrate that it has a five year supply of deliverable housing sites. On this basis the Council's policies for the supply of housing are up-to-date.

Planning Obligation

40. The Section 106 Agreement would secure the provision of affordable housing and financial contributions towards education and library provision. Further financial contributions would be secured towards mitigation measures in respect of Bossenden Wood to ensure that birds are not disturbed by increased visitor pressure and towards similar measures in respect of nearby Special Protection Areas. The Agreement would also secure the provision of on-site

² Orbital Sittingbourne and Chequers Road Minster

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public open space and local employment both in construction of the scheme and its end use. The financial contributions would be necessary to mitigate the effects of the development and would not therefore represent overall benefit to the area. The use of local labour and provision of local employment would represent general benefits and I shall take these into account in the final balance.

Balance

41. I have found that the proposal would not accord with Policies ST1, ST3 and DM24 of the LP. The proposal would not accord with the development plan when read as a whole. There are however material considerations that weigh in favour of the proposal. The provision of 77 new dwellings would be of benefit in contributing to the housing supply given the need to boost significantly the supply of housing. The affordable housing provision at 40% of the total would represent a further benefit which would address the need that has been identified by the Parish Council. This provision would also be of particular benefit in the context of the past low level of provision in the Borough and the low policy expectations in respect of affordable housing provision in other parts of the Borough.
42. The development would also provide a retail shop which could be occupied as a local convenience store. Heads of terms for an occupier have been agreed with the appellant. This would be of clear benefit both to the residents of the proposed development and existing residents in the village as well as those working in the nearby employment park. It would reduce the need to travel by car to other facilities.
43. The proposed B1 floor space would consolidate the existing employment provision in the area and allow for local residents to work locally, thereby further contributing to a reduction in the need to travel. Economic benefit would also accrue from the use of local labour in construction. I give significant weights to all of these identified benefits but those weights are not sufficient to outweigh the clear conflict with the development plan and the harms that I have identified with respect to the character and appearance of the area and the Council's settlement strategy.

Conclusion

44. For the reasons given I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

William Upton, of Counsel instructed by Mid Kent Legal Services

He called

David Huskisson Dip LA CMLI	Huskisson Brown Associates
Luke Simpson BSc MSc MRTPI	Principal Planning Consultant, Adams Hendry Consulting Ltd
Julie Davies BA (Hons) BTP MRTPI	Senior Planning Officer, Swale Borough Council
Jim Wilson	Major Projects Officer, Swale Borough Council

FOR THE APPELLANT:

Jeremy Cahill, of Queens Counsel instructed by Karen Cooksley, Partner,
Winckworth Sherwood

He called

David Williams BA (Hons) Dip (Hons) LA MLI	David Williams Landscape Consultancy Ltd
Paul Burley BA (Hons) MPhil MRTPI	Partner, Montague Evans LLP

RULE 6 PARTY:

John Peto	Chair of Dunkirk Parish Council
Jeffery Tutt	Vice Chair of Dunkirk Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

SUBMITTED BY THE LOCAL PLANNING AUTHORITY

- 1 List of appearances
- 2 Swale Borough Council Technical Paper No. 6: Interim Review of Local Landscape Designations and Important Countryside Gaps (December 2014)
- 3 Letter from RSPB to Swale Borough Council dated 6 September 2017
- 4 Tables entitled 'Planning Obligations – Consideration against Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and Paragraph 204 of the National Planning Policy Framework dated 26.09.17 and 28.09.17
- 5 Correspondence from NHS Canterbury and Coastal Clinical Commissioning Group dated 8 and 24 May 2017

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- 6 E-mail from RSPB dated 28 September 2017
- 7 Extract from the Swale Borough Local Plan 2008 – Inset Map 11
- 8 Standard letter sent to developers by the Council requesting information on deliverability of housing sites
- 9 Extract from spreadsheet for KCC HIA data
- 10 E-mail from Angus Scott to the Council dated 27 September 2017
- 11 Closing Submissions

SUBMITTED BY THE APPELLANT

- 12 List of appearances
- 13 Opening Statement
- 14 Note on provision of employment floorspace with attached correspondence from Chris Bichard, heads of terms between the appellant and Bridgeway Stores dated 12 September 2017 and evidence of site delivery of the appellant
- 15 Landscape Context Plan 0276 L1B
- 16 Site Appraisal Plan 0276 L2E
- 17 Landscape Strategy Plan 0276 L3B
- 18 Building Heights Plan 0276 L6A
- 19 Contextual Note in relation to Core Document F1 – Norton Ash Garden Centre Site Appeal
- 20 Ecology Technical Note TN2: Consideration of Potential Effects on Church Woods, Blean SSSI Associated with Cat Predation dated 12 September 2017
- 21 Ecology Technical Note TN3: Alternative Measures to Mitigate Potential Effects on Church Woods, Blean SSSI Associated with Recreational Pressure dated 28 September 2017
- 22 Ecology Technical Note TN4: Consideration of Potential Effects on Church Woods, Blean SSSI Associated with Cat Predation (Update) dated 28 September 2017
- 23 Swale Borough Council Annual Monitoring Report 2013/14
- 24 Details of applications to renew permissions
- 25 Closing submissions
- 26 Signed Section 106 Agreement

SUBMITTED JOINTLY

- 27 Statement of Common Ground on Housing Land Supply
- 28 List of Suggested Conditions

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SUBMITTED BY DUNKIRK PARISH COUNCIL

- 29 Covering note
- 30 Opening Statement with attached Planning Decision Notice 16/507025/FULL, plans, aerial photograph and appeal decision ref APP/V2255/W/17/3172403
- 31 A literature review on the effect of pet cats on nearby protected wildlife sites by Footprint Ecology
- 32 Note on Medical Practices in and around the site
- 33 Closing Statement

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By virtue of paragraph(s) 1, 2, 3, 4, 5, 6, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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