

## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 11 October 2018

Time: 7.00pm

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

Membership:

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

Quorum = 6

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	Pages
1. Fire Evacuation Procedure	
<p>The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.</p> <p>The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.</p> <p>The Chairman will inform the meeting that:</p> <p>(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. 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 13 September 2018 (Minute Nos. 207 - 214) 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. Deferred Item

1 - 40

To consider the following application:

17/506010/FULL – Southlands, Rook Lane, Bobbing

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

Requests to speak on these items must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call us on 01795 417328)

by noon on Wednesday 10 October 2018.

6. Report of the Head of Planning Services

41 - 122

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

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call 01795 417328) by noon on Wednesday 10 October 2018.

**Issued on Tuesday, 2 October 2018**

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

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

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**PLANNING COMMITTEE – 11<sup>th</sup> OCTOBER 2018**

**DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

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<b>DEF ITEM 1 REFERENCE NO - 17/506010/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of an 74 suite Care Home (use class C2) with associated car parking, refuse and external landscaping.			
<b>ADDRESS</b> Southlands Rook Lane Bobbing Sittingbourne Kent ME9 8DZ			
<b>RECOMMENDATION – That planning permission is GRANTED subject to completion of a S106 agreement to secure NHS contributions and conditions as set out below.</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>  Whilst the site falls outside of any defined settlement, there is an identified need for such accommodation, the development would partially be on previously developed land, the site is in a reasonably accessible location, and the countryside / landscape impacts would not be significantly adverse.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>  Deferred following the Planning Committee meeting of 19 <sup>th</sup> July 2018 to allow for more detailed evidence of the highways data and consideration of air quality, and improved design quality and consideration of visual amenity and landscape implications.			
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN</b> Bobbing	<b>COUNCIL</b>	<b>APPLICANT</b> Graham Land & Development <b>AGENT</b> Carless & Adams Partnership
<b>DECISION DUE DATE</b> 16/03/18	<b>PUBLICITY EXPIRY DATE</b> 26/01/18		
<b>RELEVANT PLANNING HISTORY): As set out in original report attached.</b>			

**1.0 INTRODUCTION**

1.01 Members will note that this application was deferred at the July committee meeting for the following reasons – “*That application 17/506010/FULL be deferred for more detailed evidence of the highways data and consideration of air quality, and improved design quality and consideration of visual amenity and landscape implications.*” The original report for this meeting is attached as Appendix 1, and the minute of the meeting is attached as Appendix 2. Following deferral, further advice has been sought from KCC Highways and Transportation, and from the Council’s Environmental Health department. These comments are set out below.

## 2.0 CONSULTATIONS

### SBC Environmental Protection Team Leader

- 2.01 States that - *Further to my consultation response of 21<sup>st</sup> June, you sought clarification on a couple of matters. The first was whether the proposed development was deemed detrimental to local air quality, bearing in mind the proximity of the AQMA at Newington. I have explored this a little further at your request.*
- 2.02 *The transport statement, as you pointed out, anticipated fewer car journeys associated with the proposed use than that of the previous use of the site. Larger developments located much closer to the AQMA in question have been not been objected to by this department due to the fact that an adverse impact on air quality was not anticipated. The relatively small size of this proposal in comparison to other much larger developments closer to Newington does not cause any concern to this department in terms of air quality. In addition to this and the reduction in anticipated traffic, the nature of the prevailing winds will, in the main, direct any pollution away from the AQMA as opposed to towards it. In conclusion, no concerns are held by this department regarding any adverse affect on air quality as a result of this development.*
- 2.03 *The second point you raised was the likelihood of noise disturbance to local residents as a result of the commercial nature of this development. This is a valid point, however, I do consider any potential noise can be dealt with or mitigated by condition, which I admit I omitted in include in my original response. In order to cover the potential for noise nuisance, I recommend that any planning approval be subject to the following conditions, in addition to those I recommended in my original response:*
- 1. There shall be no servicing of the building, no goods shall be loaded or deposited and no vehicles shall arrive, depart, be loaded or unloaded, within the application site before 0700 or after 2300 hours Mondays to Saturdays or at any time on Sundays or Bank Holidays.*
  - 2. Prior to the first use of the premises, details of any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The scheme shall ensure that the noise generated at the boundary of any noise sensitive property shall not exceed Noise Rating Curve NR35 (in areas of low background sound levels a target of NR30 shall be achieved) as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers (CIBSE) Environmental Design Guide 2006. The equipment shall be maintained in a condition so that it does not exceed NR35 as described above, whenever it's operating. After installation of the approved plant, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority"*

### KCC Highways and Transportation

- 2.04 States that - *Following the deferral of this application by Members at the Planning Committee meeting of 19<sup>th</sup> July 2018, I would like to provide the following information to assist Members with respect to highway matters:*

2.05 The TRICS database is the recognised tool used in the transport industry for predicting the number of vehicle movements associated with different types of land uses and developments. The database consists of a vast number of surveys conducted at different locations to measure the trips associated with each of those sites over various time periods. Using the survey information from a number of similar sites, the system is able to predict trip rates for each of the different uses, and these can be tailored to most closely match the specific circumstances of the site in question, such as influencing factors like the population located within certain distances of the site and the local car ownership levels.

2.06 Whilst mentioned at the meeting, I don't think that it was fully appreciated that the traffic figures applicable to the former use of the development site were derived from the extant lawful use of the hospital building, rather than as a care home catering for a limited number of residents. Southlands Hospital was last operated as a specialised EMI day centre specialising in the assessment of dementia patients. This use would fall under the Health-clinic category within the TRICS database, and in this instance the amount of traffic generated from that use is calculated from the floorspace of the buildings. The buildings here amount to an area of 1,672m<sup>2</sup> according to the application details, and TRICS has generated a report to show the traffic movements expected from the lawful use, which is presented in Table 1 below.

TRIP RATE for Land Use 05 - HEALTH/E - CLINICS

**VEHICLES**

Calculation factor: 100 sqm

Estimated TRIP rate value per 1672 SQM shown in shaded columns

**BOLD** print indicates peak (busiest) period

Time Range	ARRIVALS				DEPARTURES				TOTALS			
	No. Days	Ave. GFA	Trip Rate	Estimated Trip Rate	No. Days	Ave. GFA	Trip Rate	Estimated Trip Rate	No. Days	Ave. GFA	Trip Rate	Estimated Trip Rate
00:00 - 01:00												
01:00 - 02:00												
02:00 - 03:00												
03:00 - 04:00												
04:00 - 05:00												
05:00 - 06:00												
06:00 - 07:00	2	709	0.071	1.180	2	709	0.071	1.180	2	709	0.142	2.360
07:00 - 08:00	3	544	0.184	3.074	3	544	0.061	1.025	3	544	0.245	4.099
08:00 - 09:00	5	383	1.565	26.166	5	383	0.261	4.361	5	383	1.826	30.527
09:00 - 10:00	5	<b>383</b>	<b>1.878</b>	<b>31.399</b>	5	383	1.200	20.061	5	<b>383</b>	<b>3.078</b>	<b>51.460</b>
10:00 - 11:00	5	383	0.991	16.572	5	<b>383</b>	<b>1.982</b>	<b>33.143</b>	5	383	2.973	49.715
11:00 - 12:00	5	383	1.408	23.549	5	383	0.991	16.572	5	383	2.399	40.121
12:00 - 13:00	5	383	1.461	24.421	5	383	1.565	26.166	5	383	3.026	50.587
13:00 - 14:00	5	383	1.461	24.421	5	383	1.356	22.677	5	383	2.817	47.098
14:00 - 15:00	4	461	0.923	15.431	4	461	1.031	17.246	4	461	1.954	32.677
15:00 - 16:00	4	461	0.923	15.431	4	461	1.086	18.154	4	461	2.009	33.585
16:00 - 17:00	4	461	1.031	17.246	4	461	1.303	21.785	4	461	2.334	39.031
17:00 - 18:00	4	461	0.434	7.262	4	461	1.086	18.154	4	461	1.520	25.416
18:00 - 19:00	4	461	0.109	1.815	4	461	0.217	3.631	4	461	0.326	5.446
19:00 - 20:00	3	542	0.061	1.028	3	542	0.061	1.028	3	542	0.122	2.056
20:00 - 21:00												
21:00 - 22:00												
22:00 - 23:00												
23:00 - 24:00												
<b>Total Rates:</b>			12.500	208.995			12.271	205.183			24.771	414.178

Table 1

2.07 The report above indicates that the existing buildings could generate a fairly high number of vehicle movements during each hour of the working day under its lawful use, and this is also suggested by evidence from the aerial photographs that show approximately 50 vehicles parked within the grounds in 2013.

2.08 Similarly, using TRICS to predict the traffic movements associated with the proposed care home use for 100 residents produces the report shown in Table 2.

TRIP RATE for Land Use 05 - HEALTH/F - CARE HOME (ELDERLY RESIDENTIAL)  
**VEHICLES**

Calculation factor: **1 RESIDE**

Estimated TRIP rate value per 100 RESIDE shown in shaded columns

**BOLD** print indicates peak (busiest) period

Time Range	ARRIVALS				DEPARTURES				TOTALS			
	No. Days	Ave. RESIDE	Trip Rate	Estimated Trip Rate	No. Days	Ave. RESIDE	Trip Rate	Estimated Trip Rate	No. Days	Ave. RESIDE	Trip Rate	Estimated Trip Rate
00:00 - 01:00												
01:00 - 02:00												
02:00 - 03:00												
03:00 - 04:00												
04:00 - 05:00												
05:00 - 06:00												
06:00 - 07:00												
07:00 - 08:00	8	43	0.105	10.465	8	43	0.076	7.558	8	43	0.181	18.023
08:00 - 09:00	8	43	0.064	6.395	8	43	0.049	4.942	8	43	0.113	11.337
09:00 - 10:00	8	43	0.078	7.849	8	43	0.041	4.070	8	43	0.119	11.919
10:00 - 11:00	8	43	0.073	7.267	8	43	0.078	7.849	8	43	0.151	15.116
11:00 - 12:00	8	43	0.096	9.593	8	43	0.061	6.105	8	43	0.157	15.698
12:00 - 13:00	8	43	0.076	7.558	8	43	0.061	6.105	8	43	0.137	13.663
13:00 - 14:00	8	43	0.102	10.174	8	43	0.084	8.430	8	43	0.186	18.604
14:00 - 15:00	8	43	0.081	8.140	8	43	0.064	6.395	8	43	0.145	14.535
15:00 - 16:00	8	43	0.055	5.523	8	43	0.081	8.140	8	43	0.136	13.663
16:00 - 17:00	8	43	0.055	5.523	8	43	0.090	9.012	8	43	0.145	14.535
17:00 - 18:00	8	43	0.055	5.523	8	43	0.119	11.919	8	43	0.174	17.442
18:00 - 19:00	8	43	0.044	4.360	8	43	0.044	4.360	8	43	0.088	8.720
19:00 - 20:00	8	43	0.044	4.360	8	43	0.078	7.849	8	43	0.122	12.209
20:00 - 21:00	8	43	0.023	2.326	8	43	0.029	2.907	8	43	0.052	5.233
21:00 - 22:00												
22:00 - 23:00												
23:00 - 24:00												
<b>Total Rates:</b>			0.951	95.056			0.955	95.641			1.906	190.697

Table 2

- 2.09 Comparing the two scenarios suggests that the former use would generally be associated with much higher vehicle movements throughout the day. The most relevant time to consider would be during the AM network peak hour between 08:00 and 09:00, where the former use would be expected to generate 30 movements against the 11 likely from a care home. Overall, the previous use could attract over 400 movements over the day compared to less than 200 from the proposed care home.
- 2.10 Again, aerial photography ranging from 2013 to 2018 of one of the applicant's existing care homes of a comparable size in Woodchurch, Ashford indicates that around 15 vehicles are generally parked at that site during the day.
- 2.11 Consequently, I do not believe that it can be categorically demonstrated that the proposed development would generate more vehicle movements than the former use of the hospital site could. It follows, therefore, that it would be difficult to sustain the view that the development proposal would result in a decrease in highway safety.

### 3.0 APPRAISAL OF FURTHER MATTERS RAISED BY THE PLANNING COMMITTEE

#### Highways Impacts

- 3.01 At the previous committee meeting, Members sought further clarification on the highways data used by KCC to evidence that vehicle movements arising from the scheme would be no greater than the former use of the site.



- 3.02 The KCC Highways and Transportation Officer has provided detailed further comments which are printed in full above. As Members will note, the analysis uses TRICS (Trip Rate Information Computer System) data which is an established tool in the transport industry to predict likely vehicle movements for developments and land uses. It works from a large database of traffic survey information across the country for different land uses.
- 3.03 In this instance, the TRICS data has been used firstly to assess the likely trip rates associated with the former use of the site as an EMI day centre and clinic, and then for the proposed use of the site as a care home. As Members will appreciate, a day centre / clinic would typically provide services via appointments with a steady stream of visitors attending over a day. The TRICS data demonstrates that for a building the size of Southlands, this would generate in the region of 400 vehicle movements per day, with an AM peak of 50 vehicle movements.
- 3.04 The TRICS data for a care home of the size proposed estimates that it would generate some 200 vehicle movements per day, with a peak of 18 movements. This is consistent with a use where residents typically have very low demands for vehicle use.
- 3.05 The KCC Highways and Transportation Officer has also analysed aerial photographs of the site, which demonstrate that, when operational, the day centre / clinic at Southlands was heavily parked and at parking capacity. In contrast, aerial photographs for another care home in Ashford operated by the applicant and of comparable size to the proposal show relatively low levels of parking (around 15 vehicles). Whilst the aerial photos are just a snapshot in time on one day, they do endorse the evidence set out in the TRICS data.
- 3.06 Based on this, the highways officer remains of the view that the proposal would not generate more vehicular movements than the former use of the site and no highways safety issues are raised.
- 3.07 In addition, the applicant has provided an outline travel plan incorporating traffic mitigation measures for the development. This includes provision of cycle stores, changing facilities, use of travel notice boards with details of public transport, and car sharing schemes. This is acceptable to the highways officer and can be secured via a condition to add further mitigation.
- 3.08 Whilst not directly related to this development, Members will also be aware that a residential development (reference 18/500258/FULL, 20 private dwellings and three units of accommodation for Demelza staff) on the east side of Rook Lane has recently secured a resolution to approve subject to the signing of a Section 106 Agreement from Planning Committee, which includes widening of the access and provision of a pedestrian footpath to the A2. This will in time improve visibility and provide pedestrian access at this junction, although I would stress that this is not required to make the care home proposal acceptable.
- 3.09 Taking the above into account, I remain of the view that the development would not give rise to any highways safety issues and would accord with Policy DM6 of the adopted Local Plan.

#### *Air Quality and Noise*

- 3.10 Members will note the comments from the Environmental Protection Team Leader, which are provided in full above.

- 3.11 No objection is raised to the development on air quality grounds, primarily as fewer car journeys are anticipated from the development when compared to the former use of the site – which can of course be resumed as a fall-back position. On this basis, air quality levels will not worsen – and arguably there may be a slight improvement given the evidence within the TRICS data that suggests vehicle movements would be half that of the former use of the building.
- 3.12 No objection is raised on noise grounds, although the Environmental Protection Team Leader does recommend the imposition of conditions to control hours for service vehicles to attend the site, and for details of any extraction / ventilation systems to be submitted for approval.
- 3.13 Taking the above into account, I am satisfied that there would be no worsening of air quality conditions, particularly in the Newington AQMA, as the proposed development would be likely to generate less vehicle movements than the last use, which could be resumed. Any noise impacts relating to service vehicles and plant / extraction equipment can be satisfactorily addressed by the conditions suggested by the Environmental Health Team Leader.

*Scale / Design / Visual Impact of building*

- 3.14 Paragraphs 2.01 – 2.03 of the main committee report set out the general dimensions and form of the building, and paragraphs 7.10 - 7.17 provide an analysis of visual and landscape impacts. The design of the development has not been amended further. However the following paragraphs provide further analysis of the design, and the negotiations undertaken by my officers during the course of the application to address scale, design and visual impact issues, which was raised by Members at the last meeting.
- 3.15 A key challenge on this site is the topography of the land, which falls away substantially from east to west. The care home has been designed on a “cut and fill” basis – and as a result the east elevation facing Rook Lane sits below land levels on the east side of the site – meaning that the building is effectively perceived from this direction as single storey with rooms in the roof space – as shown in elevation A on the submitted drawings.
- 3.16 As first submitted, the proposed care home was designed with a relatively unrelieved roof line. Whilst this did not pose an issue for the east facing elevation, being cut into existing levels, the design did create a large building mass that did not respond to the topography of the site and levels changes. This was raised with the applicant, and following negotiations the elevations were amended so that the roof line of the building stepped down in height from east to west, to follow the site topography. The original roofline is shown by the dashed red line on the elevation plans. Members will note that there has been a significant reduction in the height of the building by up to three metres. As a result, the roofline responds to the topography of the site in a much better way, particularly in how it steps down in height from east to west as the land slopes down in the same direction. This stepped effect not only works better with the topography of the site, but provides variation in the roofline which in turn helps to break up the scale of the building.
- 3.17 The application was also amended to help address concerns raised by local residents at Rooks View. Again, Members will note the red dashed outline on elevation K which shows the reduction in the height of the building following

amendments. The amendments also included removal of two large feature gables in this elevation, which has resulted in a much reduced building mass. This will be highlighted to Members at the committee meeting.

- 3.18 In design terms, the key issues in my opinion relate to ways in which the large scale and massing of the care home could be broken down, and how it would respect the rural setting of the area. The proposal utilises a number of methods to deal with scale – the varied roofline, different eaves heights, differences in the buildings line, gable features, and use of different materials, which all help break the building down into sections. The main external materials to be used on the elevations would be brickwork and weatherboarding, and the applicant has agreed to the use of clay tiles on the roof. Wider public views of the building would be limited and likely to be focused on the roof. I am content that the above approach has the potential to provide a good quality design.
- 3.19 In terms of wider landscape impact, the building has little impact from views to the east as it is set on a lower land level, would be no higher than the existing building on the site, and is on a backland site with intervening landscaping and two storey buildings at Rooks View providing screening.
- 3.20 The land to the west of the site rises considerably and as such, the rear part of this site effectively sits in a valley. There are no public footpaths or roads crossing this land to the west. A property known as Crock Cottage is sited on the crest of the slope and it is highly unlikely that any views of the development would be attained further to the west from this dwelling. Although I advised in my original report that this boundary is open, there is in fact some considerable mature tree planting on parts of the adjacent land which, when combined with the topography, would substantially limit any views from the west.
- 3.21 The site lies adjacent to the Rooks View housing estate to the south. As the building would be partially cut into land levels, the highest part of the care home would be roughly at the same height as the eaves levels to these properties. In public views from the south (i.e from the road at Rooks View), the care home would be significantly screened from view by these dwellings and associated garages. Any views of the care home would be seen through small gaps between these buildings, and would essentially be limited to the roof.
- 3.22 The most significant viewpoints are likely to be from the north, from public footpath ZR105. However these views are mitigated by mature landscaping around the site and on adjacent land, and also by the stepped roofline of the building, which is likely to be the most visible section of the building. In addition, these views would incorporate the Demelza House buildings and the dwellings on Rooks View. On this basis, I consider any visual impacts from this direction would fall substantially short of being “significantly adverse” – which is the planning test for undesignated landscapes under policy DM24 of the adopted Local Plan.

#### 4.0 **CONCLUSION**

- 4.01 The additional consultee comments in relation to highways, air quality and noise impacts demonstrate that these do not give rise to unacceptable impacts or worsen highways / air quality conditions compared to the former use of the site. The further design and landscape impact analysis also demonstrates that this is acceptable, and that there would not be significant adverse impacts on the landscape.

4.02 Therefore, taking the above into account together with the main report, I remain of the view that the development is acceptable and in accordance with the relevant policies of the development plan. As per the original report, I would recommend approval subject to the completion of a S106 agreement to secure NHS contributions, and with the addition of three further conditions relating to the provision of a travel plan, details of plant / extraction and a restriction on service vehicles.

**5.0 RECOMMENDATION – GRANT** Subject to the signing of a suitably-worded Section 106 agreement and the following conditions -

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

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

(2) No development beyond the construction of foundations shall take place until details in the form of samples of external finishing materials to be used in the construction of the development hereby approved 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.

(3) The development hereby permitted shall be carried out in accordance with the following approved plans: A-684 02B, 03B, 04B, 11B, 12C, 22C and LC/00185 001 Rev D.

Reason In the interests of proper planning

(4) No development (including demolition or earthworks) shall take place until tree protection measures have been installed in full accordance with the arboricultural statement reports (AR/3841rgL2, dated 17<sup>th</sup> May 2017 and AR/3481d/jq, dated 8<sup>th</sup> November 2017). No equipment, machinery or materials shall be brought on to the site until the protection measures are installed, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

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

(5) No tree shown for retention shall be damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the Arboricultural Statement Reports (AR/3841rgL2, dated 17<sup>th</sup> May 2017 and AR/3481d/jq, dated 8<sup>th</sup> November 2017), without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations or any revisions thereof. If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.

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

- (6) No development shall commence until the developer has (at their own expense):
- i) Instructed an arboricultural consultant, approved in writing by the Local Planning Authority, to liaise with the developer and/or his architect or engineer to approve relevant details of construction methods, oversee the works and report to the Council throughout the period of the works in so far as the works may affect retained trees; and
  - ii) Submitted to and obtained the written approval of the Local Planning Authority for an auditable system of arboricultural site monitoring, including a schedule of specific site events requiring arboricultural input or supervision where construction and development activity is to take place within or adjacent to any root protection area of any tree identified for retention.

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

- (7) Landscaping of the site shall be in accordance with the details shown on the soft landscaping proposals drawing LC/00185 001 Revision D. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

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

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

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

- (9) No development beyond the construction of foundations shall take place until full details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include means of enclosure, hard surfacing materials, retaining wall structures, site levels changes and an implementation programme.

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

- (10) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

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

- (11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors
  - ii. loading and unloading of plant and materials
  - iii. storage of plant and materials used in constructing the development
  - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v. wheel washing facilities and measures to guard against the deposit of mud and similar substances on the highway
  - vi. measures to control the emission of dust and dirt during construction
  - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of residential amenity.

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

Reason: In the interests of residential amenity.

- (13) No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:
- a) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
  - b) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

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

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

Reason: To ensure any contaminated land is adequately dealt with

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

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

- (16) 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 a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reasons: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site

- (17) Development shall not commence until a drainage strategy detailing the proposed means of foul disposal, any off site works required and an implementation timetable, has been submitted to and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme and timetable.

Reason: To ensure suitable capacity in the drainage network

- (18) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

- (19) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:  
a) a timetable for its implementation, and

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

Reason: To ensure that any measures to mitigate flood risk and protect water quality on/off the site are fully implemented and maintained (both during and after construction).

- (20) No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reasons: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants.

- (21) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reasons: To protect the underlying groundwater from the risk of pollution.

- (22) The area shown on the submitted layout as vehicle parking and turning space shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (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.

- (23) The development hereby approved shall not be occupied or the approved use commenced until space has been laid out for cycles to be securely sheltered and stored in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

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

- (24) The development hereby permitted shall incorporate measures to minimise the risk of crime. No development shall take place until details of such measures, according to the principle and physical security requirements of Crime Prevention through Environmental Design (CPTED) have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason: In order to minimise opportunities for crime or anti-social behaviour.



- (25) Prior to commencement of development of the new building hereby permitted, the existing buildings shown on the approved site plan shall be demolished and all material removed from the site.

Reason: To avoid an accumulation of buildings on the site, to accord with the terms of the application and protect the character and appearance of the area and wider countryside.

- (26) The premises shall be used for the purposes of a care home and ancillary elderly persons day centre as shown on the approved plans, and for no other purpose whatsoever, including any other purposes in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and any other use whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not.

Reason: In the interests of the amenities of the area, and to accord with the terms of the application which identifies substantial need for care home accommodation and which carries particular weight in the decision making process.

- (27) The development shall only be occupied by residents aged 65 years and above.

Reason: To accord with the terms of the application which identifies substantial need for accommodation for such persons and which carries particular weight in the decision making process.

- (28) The building hereby approved shall be constructed to BREEAM ‘Very Good’ Standard or an equivalent standard and prior to the use of the building the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved.

Reason: to deliver a sustainable form of design and construction

- (29) The development shall be carried out in strict accordance with the bat mitigation measures detailed within the Bat Emergence Survey and Mitigation Strategy Report (Corylus Ecology; June 2018). If the development is not commenced on the site by 31<sup>st</sup> December 2019, an updated bat survey shall be submitted to and approved in writing by the Local Planning Authority prior to such commencement.

Reason: In the interests of biodiversity

- (30) No development shall take place until -
- i) a method statement for the translocation / grafting of the existing trees as set out in the Traditional Orchard Mitigation and Compensation Strategy and Reptile Mitigation Strategy by Corylus Ecology has been submitted to and approved in writing by the Local Planning Authority.
  - ii) all mitigation measures as set out in the Traditional Orchard Mitigation and Compensation Strategy and Reptile Mitigation Strategy; Corylus; April 2018 have been carried out.

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

Reason: In the interests of biodiversity

- (31) Within 6 months of works commencing on site an ecological management and enhancement plan must be submitted to the Local Planning Authority for written approval. The plan must include the following information:
- An overview of the habitats present on site
  - Details of the mitigation implemented within the site
  - Aims and objectives of the management plans
  - Details of the management required to be implemented on the site
  - A 5 year management programme, capable of being rolled forward
  - Details of enhancements to be incorporated in to the site
  - A Site plan clearly showing the management areas and ecological enhancements

The plan shall be implemented as approved

Reason: In the interests of biodiversity

- (32) Prior to first occupation of the development, the details and specification of any external lighting shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of biodiversity and surrounding amenity.

- (33) No development beyond the construction of foundations shall take place until a Travel Plan, based on the outline proposal submitted on the 5<sup>th</sup> September 2018, has been submitted to and approved in writing by the Local Planning Authority. The Plan shall describe the means by which residents, visitors and users of the development shall be encouraged to travel to the site by means other than the private car. The plan as approved shall be implemented, monitored and reviewed (on an annual basis) and a copy of that annual review and action plan arising shall be submitted to the Local Planning Authority for approval in writing and thereafter implemented as approved.

Reason: In the interests of encouraging non-car modes of travel

- (34) There shall be no servicing of the building, no goods shall be loaded or deposited and no vehicles shall arrive, depart, be loaded or unloaded, within the application site before 0700 or after 2300 hours Mondays to Saturdays or at any time on Sundays or Bank Holidays.

Reason: To protect the amenities of surrounding occupiers.

- (35) Prior to the first use of the premises, details of any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The scheme shall ensure that the noise generated at the boundary of any noise sensitive property shall not exceed Noise Rating Curve NR35 (*in areas of low background sound levels a target of NR30 shall be achieved*) as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers (CIBSE) Environmental Design Guide 2006. The equipment shall be maintained in a condition so that it does not exceed NR35 as described above, whenever it's operating. After installation of the approved plant, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority

Reason: To protect the amenities of surrounding occupiers

### INFORMATIVES

- 1) It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>  
The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect
- 2) The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

### The Council's Approach

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

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

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

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

If your decision includes conditions, there is a separate application process to discharge them. You can apply online at, or download forms from, [www.planningportal.co.uk](http://www.planningportal.co.uk) (search for 'discharge of conditions').

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 1**

<b>2.6 REFERENCE NO - 17/506010/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of an 74 suite Care Home (use class C2) with associated car parking, refuse and external landscaping.			
<b>ADDRESS</b> Southlands Rook Lane Bobbing Sittingbourne Kent ME9 8DZ			
<b>RECOMMENDATION – That planning permission is GRANTED subject to completion of a S106 agreement to secure NHS contributions.</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>  Whilst the site falls outside of any defined settlement, there is an identified need for such accommodation, the development would partially be on previously developed land, the site is in a reasonably accessible location, and the countryside / landscape impacts would not be significantly adverse.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>  The recommendation is contrary to the views of Bobbing Parish Council			
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN</b> Bobbing	<b>COUNCIL</b>	<b>APPLICANT</b> Graham Land & Development <b>AGENT</b> Carless & Adams Partnership
<b>DECISION DUE DATE</b> 16/03/18	<b>PUBLICITY EXPIRY DATE</b> 26/01/18		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
16/503411/DEMR EQ	Prior Notification for demolition of former Southlands Medical Assessment Centre	Granted	08/09/16
14/501647/OUT	Demolition of existing building. Outline planning application for re-development of the site for 12 detached dwellings with appearance, landscaping and scale reserved	Withdrawn	07/12/15
<i>This related to residential development of the land currently occupied by the former Southlands centre, and not the greenfield land to the west. The planning committee had resolved to grant permission for the development, subject to a S106 agreement. However the land was sold to another party prior to determination and the application was withdrawn.</i>			
SW/04/1580	Alterations to provide 24 bed unit and clinic facilities for swale elderly people	Granted	15/02/05
SW/03/0755	New vehicle access road and 45 vehicle parking spaces.	Granted	19/09/03
SW/03/0826	Non illuminated entrance sign	Granted	

**APPENDIX 1**

SW/03/0227	Single storey extension	Granted	18/04/03
SW/99/0116	Relocation of generator, demolition of redundant buildings	Granted	
SW/99/1144	Outline application for 36 dwellings (on what is now Rooks View)	Granted	

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is a rectangular shaped parcel of land measuring 1.57 Ha in area. The eastern part of the site is previously developed land, occupied by the former Southlands centre, and this is a single storey building occupying a large footprint, with associated car parking. This part of the site is relatively flat and contains a number of mature trees that are protected by an area TPO. The western part of the site slopes substantially downwards to the rear (western) boundary of the site. This is undeveloped land containing largely grassland but also in part an orchard. The difference in levels is some 10 metres from east to west across the site, and some 7 metres from south to north.
- 1.02 The existing building was built in 1990 to provide residential care for dementia sufferers who could no longer reside at home. The residential element was closed some 11 years ago. The building was then used as a day centre for dementia assessment serving Sittingbourne and the surrounding area. It provided a range of functions such as one on one and group counselling and assessment, memory clinics and similar services. It took GP referrals and also accepted self-referrals. Its closure in October 2013 resulted from a reorganisation of service provision in the Swale area with the services provided elsewhere such as the Memorial Hospital.
- 1.03 The site is accessed via Rook Lane and is located behind the Rooks View housing development, so does not have a frontage onto the road. The dwellings at Rooks View also flank the site to the south, and Demelza house is located to the north. Land to the west is undeveloped – and this land rises to the west. As a result, the rear part of the site effectively sits in a valley. A belt of trees line the boundary with Demelza House. The west (rear boundary) is open.
- 1.04 The site (in part) forms part of a cluster of buildings accessed via Rook Lane, but is not located within a defined settlement and therefore falls to be considered as countryside under the local plan. Rook Lane is also designated as a rural lane.

**2.0 PROPOSAL**

- 2.01 The application seeks permission to demolish the former southlands centre and erect a 74 suite care home, for elderly people requiring specialist nursing and dementia care. Whereas the existing building is located on the eastern side of the site, the proposed care home would be sited on the western side, on what is presently undeveloped land. The care home would be arranged over three storeys, with the top floor contained within the roof space. Due to the significant levels changes, the building would be cut into land levels so that effectively the ground floor of the east facing elevation would be hidden by the rising land to the east. Due to cut and fill, the

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land levels would also be raised towards the north of the site to provide a level platform for the building.

- 2.02 The building would contain 74 “care suites”, and the applicant sets out that residents would benefit from much more space than traditional nursing homes bedrooms, to provide greater social space, dining space, and a kitchenette. The suites – which come in two formats - would measure a minimum of 23 sqm, which exceed minimum National Care Standards of 12 sqm. Other facilities would include communal lounge / dining areas, a tea bar, cinema room, hair and beauty treatment room, and a training room. The building would also accommodate a Day Centre for local elderly people, measuring some 50 sqm in size.
- 2.03 The building would be roughly “J” shaped in footprint, with two large wings at either end. It would measure some 67 metres in width and 40 metres in depth, approximately 5.5 metres in height to the eaves, and up to 12.5 metres in height to the tallest ridge lines. The building has been designed with varying ridge lines, gable features, dormers windows and hipped roofs. The elevations would be finished in a combination of brickwork, render and boarding, and the roof would be in clay tiles. It would be sited between 13 and 21 metres from the southern boundary with dwellings at Rooks View, and a similar distance to the northern boundary with Demelza House.
- 2.04 The application proposes to utilise much of the land occupied by the existing building at Southlands as a communal garden / orchard area, and would provide 50 car parking spaces, including overspill parking to be finished with seeded geocellular paving.
- 2.05 The existing orchard would be removed from the site, as would three Birch Trees, a Hawthorn tree and a multi-stemmed crack willow tree. All other trees are shown for retention.
- 2.06 The proposed care building would be set into land level so that the ground floor would be approximately 7-8 metres below the ground floor level of dwellings at Rooks View.

**3.0 PLANNING CONSTRAINTS**

- 3.01 Outside of designated built confines  
 3.02 Rook Lane is a designated rural lane  
 3.03 Site is within a Groundwater Source Protection Zone  
 3.04 The eastern part of the site (and Rooks View) is subject to Area TPO 1 of 2000

**4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 **The National Planning Policy Framework (NPPF)** – paragraphs 7 (3 dimensions to sustainable development), 14 (presumption in favour of sustainable development), 17 (core planning principles), 18-20 (economic growth), 28 (supporting a prosperous rural economy), 32 (traffic impacts / sustainable transport options), 50 (providing a mix of housing including needs for older persons), 55 (avoiding isolated new homes in the countryside), 56 (good design), 70 (guarding against the loss of community facilities), 109 (protecting the natural environment), 111 (effective use of brownfield land), 117-118 (biodiversity)
- 4.02 **The Swale Borough Local Plan – Bearing Fruits 2031** – Policies ST2, ST3, ST5, CP3, CP4, CP5, DM6, DM7, DM14, DM24, DM26, DM28.

**APPENDIX 1****4.03 Supplementary Planning Documents: - The Swale Landscape Character and Biodiversity Appraisal 2011****5.0 LOCAL REPRESENTATIONS**

5.01 8 letters of objection were received following the original notification process. Following amendments to the scheme, a further 7 letters of objection have been received, raising the following concerns –

- Size and scale of building is excessive
- There are already 3 other care homes nearby
- Overlooking of properties and gardens in Rooks View
- The access between Rook Lane and the A2 is dangerous
- Additional traffic will be generated from the development
- Disturbance during construction
- Trees must be retained on the site
- Excavation works will undermine properties on Rooks View, where there is a history of subsidence
- Impact of the development on surrounding trees
- Numerous windows in the new building will face directly towards existing dwellings on Rooks View, where there are currently no such windows.
- Disturbance from day to day operation of the care home
- Light pollution
- Rook Lane is not designed for HGV's
- Improvements to Rook Lane / the A2 junction must be made if this is approved
- The proposal to allow Demelza House to use part of the car park is not required
- Impact / loss of a rural setting
- Size, scale and mass will be overbearing
- Unacceptable visual impact
- The building would be out of keeping with the area
- Loss of views for residents in Rooks View
- This will result in financial reward for the applicant at the expense of local residents
- The site is not allocated in the Local Plan and is in the open countryside and should be protected against development.
- The brownfield land is only on the eastern side of the development.
- The design is not in keeping with the low density character of the area, or the barn / oast-like character of Demelza House
- Over-use of dormer windows on the building
- Landscaping offers limited screening
- The site is a BAP habitat, and there are bats present. The orchard has remained undisturbed.
- Transport links are insufficient – infrequent bus / train services – which will not suit people working shifts
- The traffic survey was carried out at the end of school holidays
- The development fails to protect Rook Lane as a designated rural lane.
- Mutual overlooking between the care home and properties in Rooks View
- The refuse point is sited unacceptably close to existing dwellings
- Impact on a secondary aquifer
- The community garden would present a security issue
- No need for additional care homes. Permission exists for a 60 bed care home in Iwade (on land adjacent Coleshall Farm)



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- Concern over occupancy of care home, and how this can change under the Use Classes Order
- The west part of the site was never part of the Southlands site and was purchased at a later date.
- Impact on biodiversity / wildlife
- Cumulative impact of development in the area, including the new dwellings on Rook Lane, and the proposals for housing on the opposite side of the lane (see reference 18/500258/FULL, which envisages 23 dwellings, a car park and outdoor area for events).

**6.0 CONSULTATIONS**6.01 **Bobbing Parish Council** – raise objection to the application for the following reasons

- The site is not allocated for housing in the adopted Local Plan and is outside of the built-up area boundary.
- The actual proposed building is not on previously developed land (i.e. Southlands footprint).
- The size, scale and mass are not in character with the surrounding developments.
- The Parish Council understands from residents that at certain times of the year numerous bats are present on the site, the survey does not really support this.
- The Parish Council understands that the orchard part of the site may contain historic and rare fruit trees. It would like to see a professional survey and report covering this aspect. Are there plans to save any rare trees? This area (Orchard) may also be the home of a rare beetle (the noble chafer beetle) which is extremely rare. These have been found in a neighbouring parish and this needs to be investigated.
- Access to public transport is poor. The Medway to Sittingbourne bus service is limited, a considerable walking distance away and with poor access to bus stops. There are no pavements for pedestrians.
- Concern regarding traffic generated by the care home - all of which would enter or leave the area from the A2 - Rooks Lane junction or the Bobbing Hill - Key Street roundabout junction, two of the most notorious junctions in the local area for accidents.
- This application should not be considered in isolation - within a short distance approval has recently been given to five more detached houses, on the old waterworks site adjacent to the Rook View development. The Parish Council has recently had a presentation of a proposed planning application for a development of twenty houses, plus a large car park and worker accommodation to the east side of Rook view. This whole area is in danger of being transformed from one with a rural character to one, which is being over developed without the infrastructure to cope with this.
- Concerns over future use which could be changed under Permitted Development rights. The Parish Council requests that if approved these are removed so that this cannot be changed from a Care Home unless planning permission is first obtained.

6.02 **KCC Drainage** - No objections raised, subject to conditions6.03 **KCC Commissioning Officer – Accommodation Solutions** - Kent County Council would like to express its support for this development in Swale. It fits with the need for modern care home provision locally and demographic projections as laid out in our Accommodation Strategy.

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- 6.04 **Kent Police** - Do not raise objection but observes that the application does not demonstrate how crime prevention has been designed out. Recommend the imposition of a planning condition to deal with this.
- 6.05 **Rural Planning Ltd** – advises that the undeveloped part of the site is approximately 0.8 ha and has not been in productive commercial use for many years. The 1976 Soil Survey study indicates that this land is unlikely to fall as best and most versatile agricultural land. On this basis the loss of agricultural land is not considered to be a significant consideration in this instance.
- 6.06 **UK Power Networks** - No objection
- 6.07 **Environment Agency** - No objection subject to conditions
- 6.08 **KCC Highways and Transportation** – advise that no objection is raised to the development. The submitted Transport Assessment considers the previous use as a care home and demonstrates that predicted peak traffic movements arising from the new care home are likely to be less than those generated by the former use in the AM peak and just 2 more during the PM peak. It is also noted that the most recent use of the site was as a specialised EMI (Elderly, mentally, infirm) day centre, with potential to generate over 50 movements in the AM peak and 40 movements at PM peak. Typically this could also generate similar numbers throughout each hour of the working day. Historic aerial photos also show that actual parking was much greater reported in the Transport Assessment, indicative of the more intensive use of the building as a day centre.
- 6.09 There is therefore no justification to raise concerns over traffic impact. The access and internal layout are suitable and parking provision is in line with relevant standards for this use. Recommend conditions to require parking / loading turning details during construction works, to take precautions to guard against mud on the highway, retention of car parking for the development, and cycle parking. Would also raise no objection to improvements to Rook Lane as suggested by the applicant, to change priority arrangements near the junction with the A2.
- 6.10 **KCC Ecology** – advise that the applicant has submitted a Traditional Orchard Mitigation and Compensation Strategy which confirms that an orchard will be planted elsewhere on site and created with a mixture of translocating existing trees and planting new trees. Subject to a condition to set out the methodology of for creating the orchard and subsequent management, no objection is raised to this.
- 6.11 Emergence surveys demonstrate that 1 bat was roosting in the existing building. No objection is raised to the mitigation measures in the ecology report to deal with this. Reptiles are present on site and the report details that a mitigation area within the site will be created. Overall, and subject to conditions, KCC Ecology do not object to the development.
- 6.12 **Natural England** - No Objection. Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. As your authority has measures in place to manage these potential impacts through the agreed strategic solution, subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential effects

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of the development on the site(s) and that the proposal should not result in a likely significant effect.

- 6.13 **Southern Water** – comment that an initial study indicates that Southern Water cannot currently accommodate the needs of this application without the development providing additional infrastructure, otherwise the development would increase flows into the wastewater sewerage system and increase the risk of flooding.
- 6.14 Alternatively the developer can discharge foul flow no greater than existing levels if proven to be connected, and it is ensured that there is no overall increase in flows into the foul system.
- 6.15 Should the Local Planning Authority be minded to approve the application, a condition should be attached to require a drainage strategy to be submitted and approved.
- 6.16 **SBC Tree Officer** – raises no objection to the removal of the old orchard trees, and is satisfied that important existing trees on site (including those protected by a TPO) will be retained, subject to conditions relating to tree protection measures. No objection to the new soft landscaping scheme as revised.
- 6.17 **Environmental Protection Team Leader** – No objections, subject to conditions to control hours of construction, suppression of dust, and to deal with any land contamination.
- 6.18 **NHS England** -Request a contribution of £36,000 to mitigate the likely additional impacts upon services in the area.

**7.0 APPRAISAL****Principle of Development**

- 7.01 The site is located outside of the defined settlement boundaries and falls to be considered as open countryside under policy ST3 of the adopted Local Plan. This policy states that in such locations, development will not be permitted unless supported by national policy and where it would contribute to protecting the intrinsic value, setting, tranquillity and beauty of the countryside.
- 7.02 Part of the site (extending to 0.75 hectares) falls to be considered as previously developed land. Paragraph 111 of the NPPF encourages the effective use of such land, provided it is not of high environmental value.
- 7.03 The proposal would deliver a residential led development with additional employment benefits - the application states that upwards of 100 staff would be employed. Paragraph 28 of the NPPF supports sustainable economic growth in rural areas. Paragraph 47 of the NPPF seeks to significantly boost housing supply. Paragraph 50 seeks to deliver a wide choice of housing, including the needs of different groups, such as older persons. Policy CP3 of the adopted Local Plan similarly seeks to provide a range of housing to meet needs, and seeks to prioritise the development of previously developed land.
- 7.04 Policy ST2 of the adopted Local Plan sets out the development targets in Swale for the plan period, including housing, but does not include specific targets for care homes.

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- 7.05 The applicant has provided a needs assessment for care home proposals in the Borough. This sets out that within a 5 mile radius of the site, the population of persons aged 65 years and above is set to increase by 1,100 persons by 2027, and those persons aged 85 years plus by 1000 persons during the same period. In turn, forecast demand for persons requiring care will increase from 646 to 928 persons by 2027.
- 7.06 The report sets out that there is currently a supply of 556 care bed spaces in the catchment area, of which 7% are shared rooms. In addition, a number of single bedrooms have no ensuite facilities, or are less than the current size standard of 12 sqm per room. The report identifies a current shortfall of 70 beds in 2017 and a projected shortfall of up to 332 single room spaces in the 5-mile catchment area.
- 7.07 Kent County Council has been consulted on the application and advises – as set out at Paragraph 6.03 above - that it would fit in with the needs for care home provision and demographic projections as set out in the KCC Accommodation Strategy.
- 7.08 The applicant has also submitted an alternative site assessment, which has considered other sites within urban confines in the catchment area. These have been discounted as either not fitting relevant site area criteria, not being available, or being allocated / with permission for conventional housing. Although permission has been granted for a care home at Coleshall Farm, Iwade, this would be a 60 bed unit and would not address forecast needs.
- 7.09 Taking the above into account, there are a number of competing issues to be balanced. Whilst the site is located outside of the built confines, it falls within a cluster of development on Rook Lane and part of the site represents previously developed land. The proposal would provide a form of accommodation for which a clear need has been identified, and which is expected to grow in coming years. The scheme would also provide employment benefits. Balanced against this is the impact of a large development on the intrinsic value, character and landscape setting of the countryside, whether the site is in an accessible location, as well as localised impacts including residential amenity, and highways movements. These are considered in greater detail below.

**Visual and Landscape Impact**

- 7.10 Policy DM14 of the adopted plan states that developments should respect the positive features of a site and locality, be well sited, and of a scale, design and appearance that is sympathetic and appropriate to the location. Policy CP4 states that all developments should be of high quality design and appropriate to their surroundings.
- 7.11 As a purpose-built care home, the building would occupy a large footprint and would be substantial in scale and form. The scale of the building is mitigated in part by the topography of the site and the design to build into the lower slope of the site. The effect of this is that building would appear no taller than the existing building on site, when viewed from Rook Lane, and much of the building would be lower than the road level of Rooks View.
- 7.12 The building has been designed in a rough J shape with a series of projecting gable features and use of different materials on the elevations – render, brick and weatherboarding. Rooflines are varied throughout the building, with a series of dormer windows in the roof to provide the third floor of accommodation. The building footprint,

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projections, varying rooflines and elevational materials all help to add interest and break up the scale of the building, which is architecturally superior to the existing building on site, albeit on a much larger scale.

- 7.13 Although the building is much greater in scale and form than the dwellings to the south, it does provide a care facility use which would have some similarities with the Demelza House complex to the north.
- 7.14 The land to the east of the site would be largely provided as a garden / green setting to the building. It includes retention of existing mature trees protected by a TPO, and provision of an area of new orchard planting to replace the orchard to be removed. In addition, areas of green space providing a residents' gardens would be provided to the north, south and west of the building.
- 7.15 In landscape terms, the site is a non-designated landscape. Policy DM28 of the adopted plan states that such landscapes will be protected and enhanced, and that planning permission will be granted subject to the minimisation and mitigation of adverse landscape impacts, or where significant adverse impacts remain, that the social and / or economic benefits of the proposal significantly outweigh any landscape harm.
- 7.16 The Swale Landscape Character and Biodiversity Appraisal (which is adopted as a supplementary planning document) designates the site within the Iwade Arable Farmlands. It describes the landscape as a gently undulating rural landscape, with medium and large scale fields providing long views across open the landscape; buildings of mixed style built in the mid to late 20<sup>th</sup> Century, the dominance of several major transport links through the area; a sense of isolation and a sense of tranquillity due in part to topography. The overall condition of the landscape is rated as poor, and landscape sensitivity is rated as moderate.
- 7.17 The applicant has provided a Landscape and Visual Impact Assessment (LVIA) for the site. This makes reference to the following characteristics –
- That the building would be no taller in the landscape than the existing building on site (due to levels changes)
  - That the site benefits from mature landscaping, which is a key landscape feature of the site
  - That replacement of the existing building with a larger building to the west of the site would give rise to adverse impacts. However the design of the scheme and existing / proposed landscaping would mitigate this, with an overall minor adverse impact on landscape character arising.
  - In visual amenity terms, the assessment sets out the main public visual receptors to be from the road and public right of way network. From the road network, the development would have a limited effect due to the backland location of the building, and falling topography. From the public right of way network, particularly to the north [on PROW ZR105], the impact of the development would be mitigated by landscaping and by existing built form surrounding the site.
  - The assessment concludes that there would not be any significant landscape or visual effects arising from the development.
- 7.18 I would generally agree with the findings of the LVIA. Whilst the building is extensive in size, it would not have significant landscape impacts from the east or west due to the topography of the site and surrounding area, which helps to screen the building. From the south, the building would be screened by the Rooks View development, and

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would be on lower ground than this housing. In my opinion, the greatest landscape impact would be from the north and from the public footpath network, where short and medium distance views can be attained of the site. Whilst existing landscaping would provide some screening, the building would still be visible through this. However the building would be lower in height than the dwelling at Rooks View seen in the backdrop of such views, and the tallest buildings in the Demelza House complex. The scheme has also been amended to lower the height of the building in the north corner of the site, to help reduce its wider visual impact. Taking the above into account, whilst there would be an adverse impact on the countryside through the act of developing a partially undeveloped site, I am satisfied that adverse landscape impacts are minimised by the design of the building, removal of the existing building, the topography of the site, the screening effect of existing mature landscaping (and ability to strengthen this with new landscaping), and surrounding built form. As such, I consider that the scheme would accord with policy DM24 of the adopted Local Plan.

- 7.19 In design and scale terms, the building is large and different to the residential housing to the south and east of the site. However as a care home use, it does share some similarities with the Demelza House complex to the north. I consider the building to be well designed, and the scheme respects existing site features through the retention of landscaping and use of the sloping site to manage the scale and visual impact of the development. In my opinion, the scheme would not be in conflict with Policies CP4 or DM14 of the adopted plan.

**Residential Amenity**

- 7.20 Policy DM14 of the adopted Local Plan states that developments shall cause no significant harm to surrounding amenities or other sensitive uses. In this instance, the key impacts relate to those on the dwellings at Rooks View, and on Demelza House which is clearly sensitive due to the nature of hospice care that it provides.
- 7.21 The proposed care home building would be sited immediately to the rear of the dwellings at 19, 20 and 21 Rooks View. A separation gap of between 28 metres and 33 metres would be maintained between the flank wall of the care home and these dwellings. In addition, due to differing land levels, the dwellings are sited at a much higher level than the care home - to the effect that the first two floors of the care home would be set lower than the ground floor levels of these dwellings. As such, the main outlook from the ground floor of these dwellings would be the roof of the proposed building.
- 7.22 Following concerns raised by residents, the applicant has amended the scheme to remove the large gable features originally shown in this elevation facing Rooks View, and to lower part of the building. Whilst I acknowledge that residents currently enjoy a view over an undeveloped area of land, Members will appreciate that protection of views is not a material planning consideration. In privacy terms, given the differences in levels and the separation distance of at least 28 metres, I do not consider that this would result in an unacceptable impact on existing dwellings. In terms of light and outlook, given the changes in land levels the care home would be sited well below the roofline of these dwellings, and at a distance of at least 28 metres I do not consider there to be unacceptable light or outlook impacts. Whilst the proposal would clearly change the view and outlook from these dwellings, this cannot be protected in absolute terms under the planning system.

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- 7.23 The dwellings on Rooks View that border the eastern side of the site, where the existing building, is sited would face onto the orchard, gardens and parking area. In my opinion, this would have no greater impact on amenity than the existing building and historic use of the site, and would be likely to have much less impact.
- 7.24 Some residents have complained about disturbance during construction, disturbance from the care home operation, and the effects of light pollution. Whilst there would be some disturbance arising from activities connected to the care home use, as this is primarily a residential use I do not consider such disturbance would be significant, and I note that the Environmental Protection Team Leader (see Paragraph 6.17 above) does not raise objection on such grounds. Disturbance during construction can be managed via a condition requiring a construction management plan. I do not consider light pollution to be significant given the existing lawful use of part of the site, the changes in land level which mean that any lighting is likely to be at a lower level, and the use of modern lighting technology which limits light spill. Again, a condition would control this.
- 7.25 Demelza House, as a childrens' hospice, has particular characteristics that should also be given weight - it is set in rural and relatively tranquil surroundings (notwithstanding background noise from the A2 and A249) and it is important that the impacts of the development on patients and their families are fully considered. In this respect, the proposal would provide a residential care facility that, by its nature, would be unlikely to raise significant noise or amenity issues. The proposed care home building would be sited some 50 metres from the buildings at Demelza House, with intervening landscaping. Overall, I do not consider this would be likely to impact upon the particularly sensitive nature of the Demelza House use.
- 7.26 Taking the above factors into account, I do not consider that the development would result in any unacceptable impacts on surrounding properties and uses, and this would accord with policy DM14 of the adopted Local Plan.

**Highways and locational sustainability**

- 7.27 Policies DM6 and DM7 of the adopted Local Plan require that development proposals generating significant traffic are submitted with a Transport Assessment (TA), that opportunities for sustainable transport modes have been taken up, that any adverse impacts on the highway are mitigated, that air quality is not worsened, and that appropriate parking is provided.
- 7.28 The application has been submitted with a TA This demonstrates that traffic generated by the development in the morning peak hour is likely to be less than the former use of the Southlands centre, and particularly its last use as an EMI day centre. KCC Highways and Transportation are satisfied that such vehicle generation is acceptable.
- 7.29 The site is located approximately 2kms from Newington station and a bus service operates along the A2, providing transport links to Medway and Sittingbourne. The A2 is a lit road with a dedicated pavement. Whilst Rook Lane does not provide a pavement connection to the A2, it is possible to walk through the Rooks View development to the A2 via a pedestrian link. In my opinion, this provides some transport choice for staff and visitors, albeit I recognise that some staff working shifts may not benefit from this.

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- 7.30 The scheme proposes 50 parking spaces to serve the development, and KCC Highways and Transportation advise that this is acceptable.
- 7.31 The applicant has offered to implement an improvement scheme to the existing priority road narrowing in Rook Lane, to give priority to vehicles turning from the A2 onto Rook Lane. However I note that this arrangement has been secured under the terms of the planning permission for 5 houses on the Southern Water site on Rook Lane.

**Landscaping**

- 7.32 The proposal would involve retention of many of the trees on site, and those on the eastern side of the site, as well as those off-site trees on the southern boundary are protected by an area Tree Preservation Order. Five trees are shown for removal, and although they are covered by the TPO, Members will note that they are rated Category B and C trees in the arboricultural report submitted with the application. As noted above, the Tree Officer raises no objection to this, and I am satisfied that the mature landscaped character of the eastern part of the site and site boundaries would not be adversely affected by the development.
- 7.33 The scheme includes large areas of new landscaping particularly on the eastern side of the site, to incorporate a communal garden, new orchard and wildlife mitigation area. Further tree planting is also proposed on the western and southern boundaries of the site. The Tree Officer is satisfied that such planting is appropriate.

**Ecology**

- 7.34 A mature fruit orchard, extending to 0.8 hectares, is sited on part of the western side of the site, and will be removed as a result of the development. Traditional orchards are a habitat of principle importance and a BAP Habitat. The application includes a Traditional Orchard Mitigation and Compensation Strategy which sets out that a new orchard, of 0.13 hectares, will be planted to the east of the site, and created through translocation of existing trees and planting new trees.
- 7.35 In addition, ecological surveys have revealed a bat roost in the existing building and a population of slow worms. The reports identify mitigation, to provide a receptor area for slow worms to the east side of the site, and provision of a bat box in a tree and bat access roof tiles in the proposed building.
- 7.36 Policy DM28 of the adopted plan sets out that adverse impacts on biodiversity must be mitigated, and that the preservation, restoration or re-creation of priority habitats (including BAP Habitats) should be promoted. The KCC Ecologist is satisfied that the above mitigation measures are acceptable and on this basis I consider the impacts on biodiversity to be in accordance with this policy.
- 7.37 I note that Natural England has made reference to the potential for recreational disturbance on the Swale and Medway SPA and Ramsar sites. However, as this application is for specialised elderly and dementia care accommodation, I do not consider that residents would be likely to materially add to recreational disturbance, and on this basis I am satisfied that there would not be any negative impacts.

**Other Matters**



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- 7.38 As a former day centre, the existing building offered a healthcare facility for the public. Policy CP6 of the adopted Local Plan seeks to retain such facilities to meet local needs. In this instance, I note that the premises have been closed for almost 5 years and that the services previously provided have been located elsewhere. I also note that Members had resolved in principle to allow the site to be developed for housing under application 14/501647, albeit that application was eventually withdrawn. On this basis, I do not raise objection in principle to the loss of this former use.
- 7.39 Rook Lane is a designated Rural Lane under Policy DM26 of the adopted Local Plan. The policy states that permission will not be granted for development that physically or through traffic levels would significantly harm the character of rural lanes. In this instance, KCC Highways do not raise concern that the development would increase traffic levels, and no physical works are required to the lane to accommodate the development. On this basis, I do not consider the scheme would conflict with this policy.
- 7.40 Some residents of Rooks View have raised concern that the development could impact upon land stability, given the changes in level. Some also report historical problems with subsidence. Any excavation and retaining wall structures will need to be engineered to avoid this. However, this is not a matter that falls under planning control.
- 7.41 Concern has been raised that the proposal should be considered cumulatively with other developments in the area, including the 5 dwellings on Rook Lane, and the current application for housing development on the east side of Rook Lane. Each application should be considered on its own merits, but in any case, this scheme demonstrates that there would be no material highway impacts, and I have set out above why I consider the visual impacts of the development to be limited.
- 7.42 NHS England advises that the development would generate a need for a contribution towards local services and facilities. The applicant has agreed to pay such costs.

**8.0 CONCLUSION AND FINAL BALANCING**

- 8.01 The site falls outside of any defined settlement boundary under policy ST3 of the development plan and in the open countryside where there is a general presumption against development unless supported by the NPPF and where impacts on the countryside are acceptable. The scheme would result in the partial development of previously developed land and the application also sets out that there is an identified need for this type of accommodation in the local area. The scheme would provide employment opportunities and I consider the site to be relatively accessible and provide travel options, albeit I note that some services are limited.
- 8.02 I consider that this scheme hinges on the extent of harm to the countryside and landscape, balanced against the need for such accommodation and partial re-use of brownfield land. In this respect, I have concluded in the sections above that the countryside / landscape harm is limited due to topography, design, screening and surrounding built form. In addition, I note that the site does not fall within a designated landscape and would involve the removal of an existing building of no merit. In my opinion, the need for such accommodation in a location that is reasonably accessible would outweigh the limited harmful impact on the countryside and landscape.

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- 8.03 I have also concluded that the scheme is acceptable in highways, ecology and landscape terms, and that whilst there would be an impact on neighbouring dwellings, such impact would not be unacceptable in planning terms.
- 8.04 Paragraph 7 of the NPPF sets out the three dimensions to sustainable development, and paragraph 14 sets out how such development should be seen as a golden thread through plan-making and decision-taking.
- 8.05 In economic terms, the development would provide short-term construction employment, and long-term employment opportunities for care home staff. In social terms, the development would provide a form of accommodation for older persons. This is recognised as a sector of the population that is forecast to grow, and the development would help address such accommodation needs. In environmental terms, there would be some adverse impacts to the countryside and landscape, however these are not considered to be significant.
- 8.06 As I have assessed this specifically on the basis of an identified need for care home accommodation for persons aged 65 years +, I consider it would be appropriate to attach conditions to prevent use of the building for any other purpose, and to prevent occupation by persons under this age.
- 8.07 Taking the above into account, I would conclude that the development is acceptable, subject to completion of a S106 agreement to secure NHS contributions.

**9.0 RECOMMENDATION – GRANT** Subject to the signing of a suitably-worded Section 106 agreement and the following conditions -

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

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

- 2) No development beyond the construction of foundations shall take place until details in the form of samples of external finishing materials to be used in the construction of the development hereby approved 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.

- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: A-684 02B, 03B, 04B, 11B, 12C, 22C and LC/00185 001 Rev D.

Reason In the interests of proper planning

- 4) No development (including demolition or earthworks) shall take place until tree protection measures have been installed in full accordance with the arboricultural statement reports (AR/3841rgL2, dated 17<sup>th</sup> May 2017 and AR/3481d/jq, dated 8<sup>th</sup> November 2017). No equipment, machinery or materials shall be brought on to the site until the protection measures are installed, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site.

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Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

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

- 5) No tree shown for retention shall be damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the Arboricultural Statement Reports (AR/3841rgL2, dated 17<sup>th</sup> May 2017 and AR/3481d/jq, dated 8<sup>th</sup> November 2017), without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations or any revisions thereof. If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.

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

- 6) No development shall commence until the developer has (at their own expense):
  - i) Instructed an arboricultural consultant, approved in writing by the Local Planning Authority, to liaise with the developer and/or his architect or engineer to approve relevant details of construction methods, oversee the works and report to the Council throughout the period of the works in so far as the works may affect retained trees; and
  - ii) Submitted to and obtained the written approval of the Local Planning Authority for an auditable system of arboricultural site monitoring, including a schedule of specific site events requiring arboricultural input or supervision where construction and development activity is to take place within or adjacent to any root protection area of any tree identified for retention.

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

- 7) Landscaping of the site shall be in accordance with the details shown on the soft landscaping proposals drawing LC/00185 001 Revision D. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

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

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

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

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- 9) No development beyond the construction of foundations shall take place until full details of hard landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include means of enclosure, hard surfacing materials, retaining wall structures, site levels changes and an implementation programme.

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

- 10) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

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

- 11) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors
  - ii. loading and unloading of plant and materials
  - iii. storage of plant and materials used in constructing the development
  - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - v. wheel washing facilities and measures to guard against the deposit of mud and similar substances on the highway
  - vi. measures to control the emission of dust and dirt during construction
  - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason : In the interests of residential amenity.

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

Reason : In the interests of residential amenity.

- 13) No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:
- a) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
  - b) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a

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proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

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

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

Reason: To ensure any contaminated land is adequately dealt with

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

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

- 16) 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 a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reasons: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 109 of the National Planning Policy Framework.

- 17) Development shall not commence until a drainage strategy detailing the proposed means of foul disposal, any off site works required and a implementation timetable, has been submitted to and approved in writing by, the local planning authority in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable.

Reason: To ensure suitable capacity in the drainage network

- 18) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be

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accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

- 19) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- a) a timetable for its implementation, and
  - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that any measures to mitigate flood risk and protect water quality on/off the site are fully implemented and maintained (both during and after construction), as per the requirements of paragraph 103 of the NPPF and its associated Non-Statutory Technical Standards.

- 20) No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reasons: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants in line with paragraph 109 of the National Planning Policy Framework.

- 21) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reasons: To protect the underlying groundwater from the risk of pollution.

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

**APPENDIX 1**

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.

- 23) The development hereby approved shall not be occupied or the approved use commenced until space has been laid out for cycles to be securely sheltered and stored in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

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

- 24) The development hereby permitted shall incorporate measures to minimise the risk of crime. No development shall take place until details of such measures, according to the principle and physical security requirements of Crime Prevention through Environmental Design (CPTED) have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason: In order to minimise opportunities for crime or anti-social behaviour.

- 25) Prior to commencement of development of the new building hereby permitted, the existing buildings shown on the approved site plan shall be demolished and all material removed from the site.

Reason: To avoid an accumulation of buildings on the site, to accord with the terms of the application and protect the character and appearance of the area and wider countryside.

- 26) The premises shall be used for the purposes of a care home and ancillary elderly persons day centre as shown on the approved plans, and for no other purpose whatsoever, including any other purposes in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and any other use whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not.

Reason: In the interests of the amenities of the area, and to accord with the terms of the application which identifies substantial need for care home accommodation and which carries particular weight in the decision making process.

- 27) The development shall only be occupied by residents aged 65 years and above.

Reason: To accord with the terms of the application which identifies substantial need for accommodation for such persons and which carries particular weight in the decision making process.

- 28) The development shall be constructed to achieve the BREEAM “very good” standard or equivalent as a minimum.

**APPENDIX 1**

Reason: to deliver a sustainable form of design and construction

- 29) The development shall be carried out in strict accordance with the bat mitigation measures detailed within the Bat Emergence Survey and Mitigation Strategy Report (Corylus Ecology; June 2018). If no the development is not commenced on the site by 31<sup>st</sup> December 2019, an updated bat survey shall be submitted to and approved in writing by the Local Planning Authority prior to such commencement.

Reason: In the interests of biodiversity

- 30) No development shall take place until -
- i) a method statement for the translocation / grafting of the existing trees as set out in the Traditional Orchard Mitigation and Compensation Strategy and Reptile Mitigation Strategy by Corylus Ecology has been submitted to and approved in writing by the Local Planning Authority.
  - ii) all mitigation measures as set out in the Traditional Orchard Mitigation and Compensation Strategy and Reptile Mitigation Strategy; Corylus; April 2018 have been carried out.

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

Reason: In the interests of biodiversity

- 31) Within 6 months of works commencing on site an ecological management and enhancement plan must be submitted to the Local Planning Authority for written approval. The plan must include the following information:
- Overview of the habitats present on site
  - Details of the mitigation implemented within the site
  - Aims and objectives of the management plans
  - Details of the management required to be implemented in the site
  - 5yr management programme – capable of being rolled forward
  - Details of enhancements to be incorporated in to the site
  - Site plan clearly showing the management areas and ecological enhancements

The plan must be implemented as detailed within the approved plan.

- 32) Prior to first occupation of the development, the details and specification of any external lighting shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of biodiversity and surrounding amenity.

INFORMATIVES

- 1) It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst



**APPENDIX 1**Planning Committee Report – 19<sup>th</sup> July 2018

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some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at

<https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

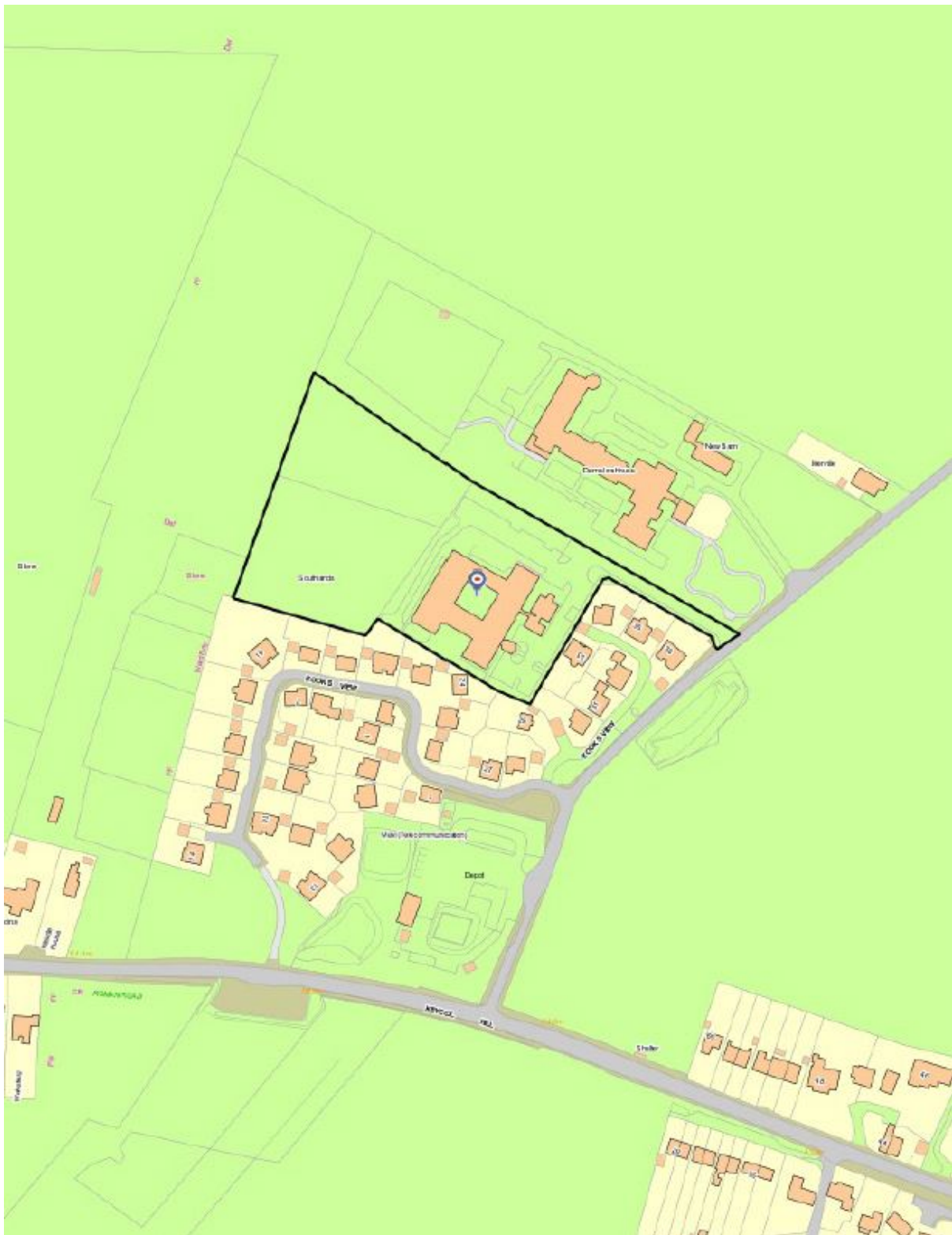
The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect

- 2) The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

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 1**



**APPENDIX 2**

*Planning Committee*

*19 July 2018*

<b>2.6 REFERENCE NO - 17/506010/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of an 74 suite Care Home (use class C2) with associated car parking, refuse and external landscaping.		
<b>ADDRESS</b> Southlands Rook Lane Bobbing Sittingbourne Kent ME9 8DZ		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> Graham Land & Development <b>AGENT</b> Carless & Adams Partnership

The Major Projects Officer reported that the Economic Development Team generally had not much to comment on the application, and were generally supportive of it and had welcomed the opportunity for apprenticeships and new job opportunities.

The Major Projects Officer considered the application to be acceptable and in accordance with both the National Planning Policy Framework and the Local Plan.

The Chairman moved the officer recommendation to approve the application and this was seconded by the Vice-Chairman.

Parish Councillor Graham Herbert, representing Bobbing Parish Council, spoke against the application.

Joanne Prudence, an objector, spoke against the application.

Melissa Magee, the Agent, spoke in support of the application.

A visiting Member spoke against the application. He acknowledged the need for this type of facility, and also raised the following points: the site was not appropriate for the development; concerned with the extensive and large scale of the building; the land was not designated for development; it was on a rural lane; the site had poor accessibility, with a lack of public transport; the nearby roads were hazardous; unsafe roads for walking or cycling; busy in rush hour, adding to air pollution; should not allow a development that did not improve or keep neutral the impact on air quality; and this was the wrong site for the size of the development.

Another visiting Member read out a statement from a Ward Member which included the following points: this was a beautiful valley and the development caused demonstrable harm; should not be building on green fields; this was too close to residential dwellings; loss of light; noise pollution; waste collection noise and odours; it did not fit in with the area; and suggested a site meeting took place.

The Senior Development Planner (KCC) explained that traffic movement data for both the former elderly, mentally, infirm day centre and proposed care home uses had been derived from the industry-recognised prediction software tool called TRICS. This had demonstrated that the extant last use of the site could potentially have generated more traffic movements than for the proposed use.

## APPENDIX 2

*Planning Committee*

*19 July 2018*

Councillor James Hunt moved a motion for a site meeting. This was seconded by Councillor Mike Henderson.

The following points were raised in discussion on the benefits, or not, of having a site meeting: this was a poor location, a site meeting would see that; not necessary as would not see what was going to be built there; context of the topography of the land would be beneficial; it was possible to see everything with the use of photographs and plans, without meeting on site; and it would be beneficial to view Rook Lane, the traffic, and see the slope at the site, with regard to any potential overlooking.

On being put to the vote, the Chairman was required to use his casting vote, and the motion for a site meeting was lost.

Further discussion ensued which included the following points: the site was near to an Air Quality Management Area, there would be more traffic and transport movements; Key Street would be 'havoc'; unsuitable site for a care home, especially when emergency vehicles were required; the countryside was an ideal site for this type of facility; if Kent Highways and Transportation did not object to the application, the Council could not use highways as a reason for refusal; turning in from the A2 was bad; could not understand the logic of Highway's figures, with staff, commercial vehicles and visitors accessing the site; could not believe there would not be an increase in traffic movements from its previous use; this was a known dangerous junction on a blind hill; impact on the landscape from afar; this would blight the area and was detrimental to the visual amenity of local residents; the facility was likely to only have low light at night for the staff and so light pollution should not be an issue; and did not consider the patients would cause issues of overlooking to neighbouring properties.

A Member requested a one word answer as to whether the junction was currently considered to be dangerous, and the Senior Development Planner (KCC) said 'no'.

The Vice-Chairman withdrew his seconding of the proposal.

The Major Projects Officer explained that the TRICS system used by KCC Highways and Transportation to interrogate traffic data was well respected and could be relied upon for reliable comparisons between different land uses.

Councillor Andy Booth moved a motion to defer the application for more detailed evidence of the highways data and consideration of air quality. This was seconded by the Chairman. The Proposer and Seconder agreed to an amendment by Councillor Mike Henderson to include improved design quality and consideration of landscape impact and visual amenity. On being put to the vote, the motion was agreed.

***Resolved: That application 17/506010/FULL be deferred for more detailed evidence of the highways data and consideration of air quality, and improved design quality and consideration of visual amenity and landscape implications.***

## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**11 OCTOBER 2018**

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

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

GPDO The Town and Country Planning (General Permitted Development) (England) Order 2015

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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## INDEX OF ITEMS FOR PLANNING COMMITTEE – 11 OCTOBER 2018

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**PLANNING COMMITTEE – 11<sup>TH</sup> OCTOBER 2018**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 18/503274/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of 1 detached 3 bedroom chalet bungalow.			
<b>ADDRESS</b> 82 Church Lane Newington Sittingbourne Kent ME9 7JU			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The changes proposed from approved bungalow would have an acceptable impact upon residential amenity, visual amenity and parking provision.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN</b> Newington	<b>COUNCIL</b>	<b>APPLICANT</b> Mr K Cooper <b>AGENT</b> T Fleming Homes Ltd
<b>DECISION DUE DATE</b> 25/10/18	<b>PUBLICITY EXPIRY DATE</b> 20/09/18		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
Land to the rear of 80 and 82 Church Lane;			
18/501586/REM	Reserved matters of access, appearance, scale, layout and landscaping pursuant to outline permission 16/505663/OUT for erection of 1 detached 2 bedroom bungalow.	APPROVED	01.06.18
16/505663/OUT	Outline application for the erection of 1 detached 2 bedroom bungalow with all matters reserved for future consideration.	APPROVED	20.10.16
<i>This application was reported to Planning Committee at the same time as the below application. Officers recommended approval, and the application was approved, with a condition added restricting rooms in the roof space of the bungalow.</i>			
16/505653/OUT	Outline application for the erection of 2 no. 3 bedroom semi-detached houses with all matters reserved for future consideration.	REFUSED	20.10.16

*This application was reported to Planning Committee, with Planning Officers recommending approval, however this was overturned and the application was refused.*

Existing bungalow at 82 Church Lane;

18/500652/FULL	Conversion of loft into a habitable space and creation of a car port, including the removal of the existing roof and erection of a new wider roof with an increased ridge height.	APPROVED	29.03.18
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**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is situated to the north of the railway bridge in Newington. It forms part of the rear garden of 82 Church Lane and extends to the rear of 80 Church Lane. It is accessed via a private road which leads to a small garage court. The site is flat with typical domestic landscaping in place.
- 1.02 There are two storey modern estate dwellings to the north and north west. To the west is 82 Church Lane, a modest bungalow also owned by the applicant. To the south are the gardens of dwellings fronting on to Church Lane. To the east of the site is a terrace of two storey dwellings known as St Matthews Close.
- 1.03 Outline permission for a two bedroom bungalow was approved under 16/505663/OUT and details regarding access, appearance, scale, layout and landscaping were approved under an application for reserved matters, 18/501586/REM. Construction of the bungalow has not yet commenced.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a four bedroom chalet bungalow on the site. Two bedrooms, a bathroom and an open plan living/kitchen and dining room are proposed on the ground floor. In the roof space, two bedrooms and a bathroom will be created. Two parking spaces will be provided to the front of the chalet bungalow. The proposed chalet bungalow will be very similar to the approved bungalow on the site. The only change between this application and the approved bungalow is the addition of two rooms in the roof space resulting in two roof lights on the rear roof slope. For clarity, I have included both the outline (ref. 16/505663/OUT) and reserved matters (ref. 18/501586/REM) applications as appendix 1 and 2.
- 2.02 Amended plans were submitted, removing a bedroom on the ground floor by creating a larger open plan living/kitchen and dining room. An additional parking space was also provided to the side of the chalet bungalow. As such, the application now proposes a three bedroom dwelling with three parking spaces.
- 2.03 A new application for planning permission was required as a condition restricting rooms in the roof space of the approved bungalow was included on the outline application (ref. 16/505663/OUT).

**3.0 PLANNING CONSTRAINTS**

- 3.01 None

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

- 4.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.02 Development Plan: Policies ST1, ST3, CP3, CP4, DM7, DM14 and DM19 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.
- 4.03 The Council's Supplementary Planning Guidance entitled "Designing an Extension: A Guide for Householders" which was adopted on the 9<sup>th</sup> December 1992, is relevant and remains a material consideration having been through a formal review and adoption process.

#### **5.0 LOCAL REPRESENTATIONS**

- 5.01 Seven objections were originally received on the application. Their comments are summarised below:
- Two additional bedrooms could result in an increase in the number of vehicles at the property in an area that already suffers from parking issues.
  - The bungalow is surrounded by at least 8 other properties and will affect the outlook of many neighbours.
  - Two windows in the roof will result in overlooking.
  - The density of the roof space would cause even more overshadowing.
  - The rear garden is only 8m in length and the Council recommends a minimum of 10m, therefore the outside amenity space is inadequate.
  - Works would cause even more noise, smells, building material debris and disturbance than we are already going to face.
- 5.02 As we have received a total of seven objections to the proposal, I have contacted the relevant Ward Members and asked whether they would wish the application to be called in to be heard at the Planning Committee, as per the Council's Constitution. Both Cllr Lewin and Cllr Wright did not wish to call the application into Planning Committee, although Cllr Wright did note the garden does not comply with Council guidelines.
- 5.03 Subsequently, Newington Parish Council submitted comments objecting to the application, stating they opposed the original application for this development and they strongly object to this application. They note neighbours concerns regarding the access to the new property and mention the traffic issues in Church Lane, explaining that this proposal could result in additional vehicles parking either in Church Lane or the already congested private driveway. They also raise concerns about overlooking from the rooflights.
- 5.04 Amended plans were submitted and the description was altered. As such, neighbours and the Parish Council were re-consulted on the application.
- 5.05 A further three objections were received from neighbours. Their comments are summarised below:
- Internal layout could be changed on the ground floor creating a four bedroom property.
  - Outline application stated bungalow should be single storey, to prevent harm to visual amenity.

- All 3 occupants of the 3 bedroom chalet bungalow may own cars which could cause direct issues in the neighbourhood – frustrate visual and residential amenity and ability to have peace and relax.
- Already facing disruption with work that is going on at main bungalow No. 82.

## **6.0 CONSULTATIONS**

- 6.01 KCC Highways & Transportation state the development does not meet the criteria to warrant involvement from the Highway Authority.
- 6.02 Southern Water has no comments to make with regards to the removal of condition 12. The comments in the original response dated 28.07.2016 remain unchanged and valid.
- 6.03 Environmental Health has no comments to make.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence relating to planning applications 16/505663/OUT, 18/501586/REM and 18/503274/FULL.

## **8.0 APPRAISAL**

### **Principle of Development**

- 8.01 The principle of development, scale, layout, access and landscaping of the proposed chalet bungalow has been determined under the applications for outline permission (16/505663/OUT – appendix 1) and reserved matters (18/501586/REM – appendix 2). Therefore only the changes between the approved bungalow and this application will be discussed here, namely the impact additional rooms in the roof space will have on residential and visual amenity and parking provision.

### **Visual Impact**

- 8.02 Regarding the addition of two roof lights to the rear roof slope, I consider they would sit comfortably on the dwelling, and would not give rise to unacceptable impacts to the character and appearance of the property. I note due to their position on the rear roof slope they will not be visible in the street scene.

### **Residential Amenity**

- 8.03 This application includes the addition of two roof lights to the bungalow. All other aspects of the design and scale of the dwelling were deemed acceptable under 18/501586/REM (appendix 2). As the two windows will be roof lights, I believe no overbearing / overshadowing impacts will arise. Concern was raised regarding potential overlooking from these windows. The windows would face onto the rear gardens of the properties along Church Lane but I note due to the position of the proposed bungalow, the windows would provide views of the very rear of the gardens along this stretch of Church Lane. The closest garden, at No. 80 would be approximately 10m away from the windows. However, although there is potential for some overlooking to occur, I consider this would not be significant enough to warrant a reason for refusal in this case.

- 8.04 Concern was also raised about the size of the rear garden, which is approximately 8m in length. In the delegated report for 18/501586/REM (appendix 2), it states the following:

*“The Council typically requests rear gardens have a length of at least 10m, but taking into account the bungalow will have only 2 bedrooms, I consider the scale of the outside amenity space provided is adequate.”*

The proposed dwelling will have three bedrooms. Although the garden is slightly below the preferred size, I do not consider this would amount on its own to a reason for refusal on this application. The property is likely to be occupied by a family whether it has two bedrooms or three bedrooms, and the garden would provide enough space for such a dwelling. As such, I believe the size of the garden would be acceptable for a three bedroom property.

- 8.05 In order to create another parking space at the new property, the remaining rear garden at existing dwelling No. 82 Church Lane has been reduced to 9.5m in length. I consider this will still provide an acceptable level of private amenity space for the property, so have no concerns here.

### **Highways**

- 8.06 Three car parking spaces are proposed to the front of the bungalow. With the additional rooms in the roof space, the bungalow will be a three bedroom dwelling. According to the Kent Design Guide Review: Interim Guidance Note 3 20 November 2008 – Residential Parking, two spaces would be required for a three bedroom dwelling in this location. As such, the proposed parking provision is acceptable. I note concern was raised regarding the potential increase in vehicles from the addition of two bedrooms at the property, however as the proposed parking is in line with KCC requirements, I have no concerns here.

### **Landscaping**

- 8.07 The submitted plans show proposed landscaping to the front and rear of the bungalow. An apple tree is proposed to the front of the dwelling and a field maple to the rear. I have included a condition below to ensure these details are implemented and retained.

### **Impact upon SPA and Ramsar sites**

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

### **Other Matters**

- 8.09 Concern was raised about the impact of the proposal on the outlook from neighbouring properties. However the proposed chalet bungalow differs very little in design and is the same scale as the approved bungalow, therefore I consider the impact on neighbour's outlook is acceptable. Neighbours also raise concerns about the potential of adding an additional bedroom on the ground floor of the property, as was originally proposed under this application. I note that if the chalet bungalow was

to have four bedrooms, the parking provision would remain the same, as would the level of amenity provided at the property. As such I have no concerns in this respect.

- 8.10 I take note of the comments Southern Water and Environmental Health provided on the outline application (16/505663/OUT). As such, I have included the conditions they have recommended relating to foul and surface water disposal, dust suppression and working hours. I consider these conditions will address the concern raised by objectors regarding the additional noise and disturbance that may be caused by the proposal.

## 9.0 CONCLUSION

- 9.01 On the basis of the above, I consider the proposed addition of rooms in the roof space of the bungalow will not lead to unacceptable impacts to visual and residential amenity. The parking provision at the property is adequate and I believe the proposal will provide an acceptable level of amenity for future occupiers. All other aspects of the proposal were deemed acceptable under the outline and reserved matters applications and as such, I recommend planning permission be granted.

## 10.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

- (2) 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.

- (3) The scheme of tree planting and landscaping shown on the submitted plans shall be carried out within 12 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

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

- (4) Prior to the commencement of development, details of the means of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its first occupation.

Reason: To secure appropriate foul and surface water drainage.

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

Monday to Friday 0800 – 1800 hours, Saturdays 0830 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (6) Prior to the commencement of development, 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 approved shall be employed throughout the period of construction unless any variation has been approved by the Local Plan Authority.

Reason: In the interests of residential amenity.

- (7) Prior to the commencement of development, details of ecological enhancements at the site such as bat and bird boxes shall be submitted and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its occupation.

Reason: To secure ecological enhancements.

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

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (9) Before the development hereby permitted is first used, the proposed windows in the side elevations of the bungalow shall be obscure glazed and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

- (10) 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.

- (11) The development hereby permitted shall be carried out in accordance with the following approved drawings: 7530.BR4, 7530PL1 and 7530.PL2.

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

## INFORMATIVES

- (1) The developer should contact Southern Water to arrange for a connection to the public sewerage system by calling 0330 303 0119.

### **Habitat Regulations Assessment**

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

The application site is located approximately 2km south of The 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 advise 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) and; the strategic mitigation will need to be in place before the dwellings are occupied.

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

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with 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 Borough Council is of the opinion that Natural England's suggested approach of seeking developer contributions on single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and what 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 Borough Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

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

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

#### **The Council's approach to this application:**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

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

If your decision includes conditions, there is a separate application process to discharge them. You can apply online at, or download forms from, [www.planningportal.co.uk](http://www.planningportal.co.uk) (search for 'discharge of conditions').

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 1**

<b>2.6 REFERENCE NO - 16/505663/OUT</b>			
<b>APPLICATION PROPOSAL</b> Outline application for the erection of 1 detached 2 bedroom bungalow with all matters reserved for future consideration.			
<b>ADDRESS</b> 82 Church Lane Newington Kent ME9 7JU			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal entails development within the built up area boundary which is acceptable as a matter of principle. There is sufficient space on the site to accommodate the dwelling and its parking demands. The impact on residential amenity would be minimal and acceptable.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Newington Parish Council objects.			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Newington	<b>APPLICANT</b> Mrs Deborah Greene	<b>AGENT</b>
<b>DECISION DUE DATE</b> 20/10/16	<b>PUBLICITY EXPIRY DATE</b> 30/08/16		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
16/505653/OUT	Outline application for the erection of 2 no. 3 bedroom Semi-detached houses with all matters reserved for future consideration	Also on this agenda.	Na

**1.0 DESCRIPTION OF SITE**

- 1.01 The site is located to the north of the Railway bridge in Newington. It is accessed via a private road which leads to a small garage court. The site forms part of the rear garden of 82 Church Road and extends to the rear of 80 Church Lane. It is flat with typical domestic landscaping in place.
- 1.02 The site fronts on to the private access road. There are two storey modern estate dwellings to the north and north west. To the west is 82 Church Lane, a modest bungalow also owned by the applicant. To the south are the gardens of the dwellings fronting on to Church Lane. To the east of the site is a terrace of two storey dwellings known as St Matthews Close.

**2.0 PROPOSAL**

- 2.01 This is an outline planning application with all matters reserved for future consideration for the erection of a detached 2 bedroom bungalow. The indicative plan shows an 'L' shaped bungalow measuring a maximum of 9.5m deep by 10m wide. It

**APPENDIX 1**

would have two side by side car parking spaces to the front. The rear garden would be 10m long. The remaining garden for 82 Church Lane would be 12m long.

**3.0 SUMMARY INFORMATION**

	<b>Existing</b>	<b>Proposed</b>	<b>Change (+/-)</b>
Site Area (ha)	0.03ha	0.03ha	0
No. of Storeys	0	1	+1
Parking Spaces	0	2	+2
No. of Residential Units	0	1	+1

**4.0 PLANNING CONSTRAINTS**

4.01 The site is located within the built up area boundary of Newington.

**5.0 POLICY AND OTHER CONSIDERATIONS**

5.01 The National Planning Policy Framework (NPPF);

*“Achieving sustainable development*

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*At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.....*

*For decision-taking this means:10*

- approving development proposals that accord with the development plan without delay; and*
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*

*– any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*

*– specific policies in this Framework indicate development should be restricted.9”*

*“6. Delivering a wide choice of high quality homes*

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*Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.*

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*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be*

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*considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.*

*Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.”*

- 5.02 Development Plan: Policies SP1, SP4, TG1, SH1, E1, E19, H2 and T3 of the Swale Borough Local Plan 2008.
- 5.03 Policies ST1, ST3, CP3, DM7, DM14 and DM19 of the Council’s emerging Local Plan entitled Bearing Fruits 2031: The Swale Borough Local Plan Proposed Main Modifications June 2016.
- 5.04 Supplementary Planning Guidance entitled ‘Designing and Extension: A Guide for Householders’ which sets out the Council normally expects a rear to rear separation distance between dwellings of 21m.

**6.0 LOCAL REPRESENTATIONS**

- 6.01 15 letters of objection have been received from local residents which are summarised as follows;
- The proposal will exacerbate existing traffic, road safety, congestion and parking problems on Church Lane and the A2. Church Lane reduced to 1 lane by parking.
  - It is not in keeping with neighbouring houses.
  - The proposal will interfere with parking in garage court.
  - The proposal does not have the legal right to access the driveway.
  - Development in residential gardens is not allowed under the NPPF as should be avoided by the Council as it causes harm to the local area.
  - The proposal will result in loss of light, overlooking and noise issues for neighbouring dwellings.
  - Construction traffic will cause problems.
  - Objectors concur with the applicants own objections to previous proposals in the area which highlighted problems with shortfalls in infrastructure, sewerage capacity, utilities and traffic. For the applicant to apply for planning permission when he has objected to so many applications in Newington is hypocritical and the Council should look at the wording of his objections on highway grounds to nearby proposals.
  - Will exacerbate lack of school places.
  - Lack of public transport i.e. buses and trains are crowded and infrequent.
  - There are problems with air quality that will be exacerbated.
  - Nowhere for children to play on the north side of Newington.
  - Council should consider improvements to road safety and parking facilities.
  - Newington has no job opportunities.
  - The development is too dense.
  - Dust and smell issues will arise from construction near our dwelling.
  - Loss of property value.

**APPENDIX 1****7.0 CONSULTATIONS**

- 7.01 Newington Parish Council objects for the following summarised reasons;
- The application site is an appropriately sized garden for 82 Church Lane. Such gardens are popular with homebuyers.
  - The NPPF is clear Council's should resist windfall sites in domestic gardens.
  - The proposal will exacerbate traffic, congestion and parking problems on Church Lane.
  - There is confusion as to whether the applicant has the right to access the development via the shared driveway to the side of 82 Church Lane and who is responsible for maintenance of the road.
  - This is a very sketchy outline application and the lack of detail makes it impossible to make detailed comments. NPC reserves the right to make further comment should a full application be submitted.
- 7.02 The Council's Environmental Health Manager raises no objection subject to an hours of construction condition.
- 7.03 KCC Highways and Transportation notes that as the access is via a private road it has no record of rights of access and suggests that residents investigate their property deeds which may contain more information.
- 7.04 Southern Water requires a formal application for connection to the public foul sewer. There are no public surface water sewers in the area therefore the development should find an alternative means of draining surface water, not via the public foul sewer. A condition securing the means of foul and surface water sewerage disposal is requested.

**8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 The application includes a hand drawn proposed development layout plan, proposed block plan and site location plan.

**9.0 APPRAISAL****Principle of Development**

- 9.01 I note the objections of local residents and Newington Parish Council, some of which state that garden development is contrary to paragraphs 48 and 53 of the NPPF as quoted above. However, it is clear from the wording of paragraph 48 that residential gardens should not form part of a windfall allowances in calculating a five year supply of housing land as required by the NPPF. This does not mean a planning application for the development of dwelling houses in a residential garden is unacceptable as a matter of principle. With regard to paragraph 53, the NPPF makes clear Council's should consider the case for setting out policies to resists inappropriate development of residential gardens, for example where development would cause harm to the local area. The Council has not adopted such a specific policy but it does have several other policies such as E1 and E19 of the adopted Local Plan that require all developments not to cause harm to amenity. This is discussed in full below but in my

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opinion the proposal would not cause harm to the local area sufficient to warrant the refusal of planning permission.

- 9.02 The site is located within the built up area boundary of Newington as defined by the Proposals Map of the Swale Borough Local Plan 2008. As set out in policy H2 the principle of development is acceptable. Whilst residential gardens have been removed from the definition of brownfield land it remains preferable to make efficient use of land within built up areas instead of developing greenfield sites in the countryside. The site is considered to be located in a sustainable central location with access to the services, facilities and transport options Newington has to offer. For these reasons, the principle of the proposal is acceptable in my opinion.

**Residential Amenity**

- 9.03 This outline application does not provide details of the scale, appearance or layout reserved matters of the bungalow. Notwithstanding the above, the impact of a bungalow is inherently less significant than a two storey dwelling. Single storey development surrounded by standard residential fencing creates very little overlooking. The indicative plan submitted with the application demonstrates that it is possible for the site to accommodate a single bungalow that secures a 27m separation distance between the rear elevation and that of 5 St Matthews Close, noting only 21m is required by the Council's SPG on domestic extensions. The proposal would be a minimum of 9m from the side elevation of 4 St Matthews Close and the proposal is positioned in such a way in relation to this neighbouring property that there would be no harm to residential amenity. The front elevation of the proposal would be 21m from the main two storey rear elevation of 7 St Stephens Close to the north which is sufficient distance to prevent harm to residential amenity. The proposal would be 20m from 92 Church Lane and set at an angle to it which would result in no harm to residential amenity. There would be a gap of approximately 15m between the side elevation of the proposal and the rear elevation of the host property, 82 Church Lane which is sufficient distance to prevent harm to residential amenity. The separation distance to 80 Church Lane is 25m which again prevents harm to residential amenity.
- 9.04 The small footprint and low profile of the bungalow combined with the proposed gaps between it and the application site boundary, including a 10m long rear garden, serve to further reduce any potential impact from loss of light, overshadowing and overbearing, contrary to the objections received. The proposal entails accommodation that would provide an acceptable level of amenity for future occupants. The remaining garden space serving 82 Church Lane is acceptable. The resulting impact on residential amenity would be acceptable in my opinion.

**Highways**

- 9.05 I note the significant level of objection to the impacts of the development on highway safety and convenience. KCC Highways and Transportation no longer provides advice on such small scale proposals. The current vehicle parking standards entitled 'Kent Design Guide Review: Interim Guidance Note 3: Residential Parking' require that a two bedroom dwelling in a village location has a minimum of 1.5 car parking spaces. This is rounded up to two spaces for single dwelling proposals. The proposal provides 2 car parking spaces in accordance with these standards. There is sufficient space on the site for the car parking spaces to be of an appropriate size i.e. 5m long

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by 2.5m wide or 2.7m wide if up against a boundary. The position of the dwelling and visibility splays is such that should the vehicles parked in the proposed car parking spaces enter the private access road in a forward or reverse gear, there would be no harm to highway safety and convenience in my opinion. It is important to note the very slow vehicle speeds on the private access.

- 9.06 The spaces are sufficiently removed from the existing garages and parking spaces to the front that there would be no interference with the spaces.

**Other Matters**

- 9.07 I note the objections regarding the legal right to access the development via the private road. It is well established that the Council is free to grant planning permission for a development and it is the applicant’s responsibility to ensure that they have the legal right to access the development. Should these rights not exist there would effectively be a ransom strip around the site, but this is for the applicant to overcome outside of the planning system and Members should be aware that the legal right to access a proposal is not a material planning consideration.

- 9.08 The hours of construction and foul and surface water drainage conditions recommended by consultees are attached to prevent harm to amenity and flooding.

**10.0 CONCLUSION**

- 10.01 The proposal entails development within the built up area boundary which is acceptable as a matter of principle. There is sufficient space on the site to accommodate the dwelling and its parking demands. The impact on residential amenity would be minimal and acceptable.

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

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

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

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

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

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

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



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(4) Prior to the commencement of development, details of the means of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its first occupation.

Reason: To secure appropriate foul and surface water drainage.

(5) Prior to the commencement of development, details shall be submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development as approved.

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

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

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

(7) The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking of 2 cars (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

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

(8) The sight lines shown on the approved plans shall be provided prior to the occupation of the dwelling hereby permitted and thereafter maintained clear of any structure, tree, plant or other obstruction which exceed 0.6 metres above carriageway level within the approved sight lines.

Reason: In the interests of highway safety.

(9) Prior to the commencement of development, 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 approved shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity.

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(10) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-  
Monday to Friday 0800 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

(11) Prior to the commencement of development, details of ecological enhancements at the site such as bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated into the development prior to its occupation.

Reason: To secure ecological enhancements.

**INFORMATIVES**

The developer should contact Southern Water to arrange for a connection to the public sewerage system by calling 0330 303 0119.

**Habitat Regulations Assessment Screening**

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

The application site is located approximately 2km south of the Swale Special Protection Area (SPA) and Ramsar site both of which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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

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

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

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

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

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

**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.

In this instance:

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The application was acceptable as submitted and no further assistance was required.  
The applicant/agent was provided formal pre-application advice.  
The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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

**APPENDIX 2**

<b>NOTES FOR TECH:</b>		
<b>APPLICATION PROPOSAL</b>		<b>Ref No 18/501586/REM</b>
Reserved matters of access, appearance, scale, layout and landscaping pursuant to outline permission 16/505663/OUT for erection of 1 detached 2 bedroom bungalow.		
<b>ADDRESS</b> 82 Church Lane Newington Sittingbourne Kent ME9 7JU		
<b>RECOMMENDATION</b> – Application Permitted		
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Newington	<b>APPLICANT</b> Mr K Cooper <b>AGENT</b> T Fleming Homes Ltd
<b>DECISION DUE DATE</b> 04/06/18	<b>PUBLICITY EXPIRY DATE</b> 29/05/18	<b>OFFICER SITE VISIT DATE</b> 17/04/18
<b>RELEVANT PLANNING HISTORY (including relevant history on adjoining site):</b>		
<b>App No</b>	<b>Summary</b>	
16/505653/OUT	Outline application for the erection of 2 no. 3 bedroom semi-detached houses with all matters reserved for future consideration. REFUSED	
16/505663/OUT	Outline application for the erection of 1 detached 2 bedroom bungalow with all matters reserved for future consideration. APPROVED	

**DESCRIPTION OF SITE**

The application site is situated to the north of the railway bridge in Newington. It forms part of the rear garden of 82 Church Lane and extends to the rear of 80 Church Lane. It is accessed via a private road which leads to a small garage court. The site is flat with typical domestic landscaping in place.

There are two storey modern estate dwellings to the north and north west. To the west is 82 Church Lane, a modest bungalow also owned by the applicant. To the south are the gardens of dwellings fronting on to Church Lane. To the east of the site is a terrace of two storey dwellings known as St Matthews Close.

**PROPOSAL**

This application seeks approval of reserved matters further to grant of outline permission under reference 16/505663/OUT.

Matters of access, appearance, scale, layout and landscaping have been submitted in relation to the single storey detached bungalow. The property will face onto the garage court, and 2 parking spaces will be provided to the front of the dwelling. The bungalow will have a total floor area of 86.5m<sup>2</sup>, and will be roughly ‘L’ shaped, with a maximum width of 10.42m and maximum length of 10.42m. The bungalow would have a hipped roof with a maximum height of 6.2m and an eaves height of 2.7m. The property would provide 2 bedrooms, an ensuite, a kitchen, living and dining area and a bathroom.

The rear garden at the proposed bungalow would be 8.85m long and the remaining garden for 82 Church Lane would be 11.4m long. Amended plans were submitted including the proposed landscaping details, showing the rear garden will be laid to grass and a field maple will be situated to the rear of the property. An apple tree will be located to the front of the bungalow.

**SUMMARY INFORMATION**

	<b>Existing</b>	<b>Proposed</b>	<b>Change (+/-)</b>
Site Area	0.03ha	0.03ha	0

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No. of Storeys	0	1	+1
Parking Spaces	0	2	+2
No. of Residential Units	0	1	+1

**PLANNING CONSTRAINTS**

None

**POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)  
 National Planning Practice Guidance (NPPG)  
 Development Plan: Policies ST1, ST3, CP3, CP4, DM7, DM14 and DM19 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

The Council’s Supplementary Planning Guidance entitled “Designing an Extension: A Guide for Householders” which was adopted on the 9<sup>th</sup> December 1992, is relevant and remains a material consideration having been through a formal review and adoption process.

**LOCAL REPRESENTATIONS**

One letter was received from a neighbour neither supporting nor objecting to the proposal. Their comments are summarised below:

- The driveway/garage areas should be made good after the building work
- 24 hour access to the garages should be provided during the building work
- The owners of the garages are jointly responsible for the cost of maintaining the driveway/garage areas. The owners of the new bungalow (and maybe the existing bungalow) will need to access our land to gain access to their property, how do we ensure that in their deeds they share a responsibility for any maintenance costs?

Newington Parish Council – *“Councillors have considered the application and had no comment to the design but requests Swale Borough Council will take notice of residents’ concerns about the shared driveway and that there be covenant on the building that there is no occupation of the roof space.”*

**CONSULTATION RESPONSES**

KCC Highways – The development proposal does not meet the criteria to warrant involvement from the Highway Authority.

Southern Water – Cannot discharge condition 4 as the final discharge point to the public sewer has not been indicated. The applicant should submit a detailed drainage layout plan, clearing indicating the on-site drainage and their relevant discharge points to the public sewer.

Environmental Health – No objections.

**APPRAISAL**

The principle of development has been agreed under application 16/505663/OUT and only matters of detail are up for consideration here.

Appearance / Landscaping

**APPENDIX 2**

I consider the dwelling itself is of an appropriate scale and a good standard of design. No proposed materials have been submitted as part of this application so I have included the relevant condition below to ensure these details are submitted to and approved by the Council. The development will front onto a private access road, and will be mainly screened from Church Lane by the existing bungalow, No. 82.

Amended plans were submitted showing the proposed landscaping to the front and rear of the bungalow. An apple tree is proposed to the front of the dwelling and a field maple to the rear. Overall, taking into account the design of the dwelling and the proposed landscaping, I consider the proposal will not adversely impact the street scene or surrounding area.

Layout / scale / amenity

The submitted plans show that there will be a distance of approximately 25m between the rear elevation and that of 5 Matthews Close. I note only 21m is required by the Council's SPG on domestic extensions. The proposal would be a minimum of 10m from the side elevation of 4 Matthews Close and the proposal is situated in such a way in relation to this neighbouring property that there would be no harm to residential amenity. I note windows are proposed in the flank walls of the development, which could potentially cause overlooking issues, and as such I have conditioned the windows to be obscure glazed to mitigate this. The front elevation of the proposal would be 23.4m from the main two storey rear elevation of 7 St. Stephens Close to the north which is a sufficient distance to prevent harm to residential amenity. The proposal would be 19.4m from 92 Church Lane and set at an angle to it which would result in minimal harm to residential amenity. There would be a gap of approximately 12.6m between the side elevation of the proposal and the rear elevation of the host property, 82 Church Lane, which I consider is a sufficient distance to prevent harm to residential amenity. The separation distance to 80 Church Lane is 22.3m which again prevents harm to residential amenity.

On the basis of the above, I consider the impact to residential amenity will be acceptable and will not give rise to any serious issues of overlooking or overshadowing for neighbouring properties. Therefore I believe the layout and scale of the development is acceptable.

Regarding the level of amenity provided for the future occupiers of the bungalow, I note the rear garden will be a minimum of approximately 8m in length. The Council typically requests rear gardens have a length of at least 10m, but taking into account the bungalow will have only 2 bedrooms, I consider the scale of the outside amenity space provided is adequate. The proposed accommodation in the bungalow is also acceptable in my opinion, and therefore I consider the proposal will offer a good standard of amenity for future residents.

Highways / parking / access

The development will provide two car parking spaces to the front of the dwelling, which is in accordance with the Kent Design Guide Review: Interim Guidance Note 3 20 November 2008 – Residential Parking), which states that 1.5 car parking spaces will be required in this location. The size of the spaces is in line with KKC requirements, and as such I believe the parking provision at the bungalow is acceptable.

The position of the dwelling and visibility splays is such that should the vehicles parked in the proposed car parking spaces enter the private access road in a forward or reverse gear, there would be no harm to highway safety or convenience in my opinion, especially when taking into account the very slow vehicle speeds on the private access road.

**APPENDIX 2**

Regarding the concern raised by a neighbour and seconded by the Parish Council about the new owners of the bungalow contributing to the cost of maintaining the access road, this is a civil matter and is not a material planning consideration, so therefore will not be discussed here.

Dust suppression

Environmental Health was consulted on the application and I note they had no objections to the submitted Dust Suppression document. As such, I consider the submitted document is acceptable. Notwithstanding this, it is required by a condition of the outline PP and cannot be dealt with under a reserved matters application, but rather by submission of details pursuant to conditions.

Foul and surface water

As shown by Southern Water's comments, the submitted plans do not show enough detail regarding foul and surface water disposal. This is dealt with by condition of the outline PP – see above.

Conclusion

Overall I consider the development is acceptable and will not give rise to any unacceptable impacts to residential or visual amenities. Therefore I recommend that the reserved matters should be approved.

**RECOMMENDATION** – Grant subject to the following conditions:

- (1) 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.

- (2) The scheme of tree planting and landscaping shown on the submitted plans shall be carried out within 12 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

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

- (3) Before the development hereby permitted is first used, the proposed windows in the side elevations of the bungalow shall be obscure glazed and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

**INFORMATIVES**

- (1) The developer should contact Southern Water to arrange for a connection to the public sewerage system by calling 0330 303 0119.

Case Officer Megan Harris



**APPENDIX 2**

Case Officer Sign: MHarris	Date: 31.05.2018
Delegated Authority Sign: RB	Date: 31/5/18
PRINT NAME:	
TL/DM Countersign if refused:	Date:

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**PLANNING COMMITTEE – 11<sup>TH</sup> OCTOBER 2018**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 18/503008/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of a new detached bungalow on garden site to the side of existing dwelling.			
<b>ADDRESS</b> 2 Sunnyside Avenue Minster-on-sea Sheerness Kent ME12 2EN			
<b>RECOMMENDATION</b> Refuse			
<b>SUMMARY OF REASONS FOR REFUSAL</b> The proposed dwelling, by virtue of its scale and location on the plot, would have an overbearing impact and would create a sense of enclosure, giving rise to loss of outlook, harmful to the residential amenities of the occupiers of no. 2 Sunnyside Avenue. The proposal would therefore be contrary to policies CP4 and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan 2017".  The proposed development and the subdivision of the site, result in a substandard provision of private amenity space to the existing dwelling, harmful to the residential amenities of the occupants 2 Sunnyside Avenue. The proposal would therefore be contrary to policies CP 4 and DM 14 of "Bearing Fruits 2031: The Swale Borough Local Plan 2017".			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council support the application.			
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN</b> Minster-On-Sea	<b>COUNCIL</b>	<b>APPLICANT</b> Mr Roach <b>AGENT</b> Architecnique Architects
<b>DECISION DUE DATE</b> 27/08/18	<b>PUBLICITY EXPIRY DATE</b> 14/08/18		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
17/505973/FULL	Retrospective - demolish metal frame workshop and replace with outdoor timber office with change of use from outbuilding to B1 business use.	APPROVED	29/05/18

## **1.0 DESCRIPTION OF SITE**

- 1.01 2 Sunnyside Avenue is a detached bungalow located within the built up area boundary of Minster. The property has a large open frontage with a hardstanding driveway and a wooden office located to the front as well as a garage.
- 1.02 The site is located at a junction on a corner plot and has a frontage that faces onto Sunnyside Avenue but with amenity space that extends along Scrapsgate Road. A large hedge extends along the boundary of the property, enclosing the private amenity space to the side of the dwelling and obscuring the majority of the existing dwelling from Scrapsgate Road.
- 1.03 The existing dwelling is irregular in its orientation in the streetscene as it is set back from the building line of Sunnyside Avenue and has its private amenity space extending to the side of the dwelling as opposed to the rear.

## **2.0 PROPOSAL**

- 2.01 This planning application seeks permission for the erection of a new three bedroom detached dwelling located in the private amenity space of the existing bungalow.
- 2.02 Whilst access to the existing bungalow is gained from Sunnyside Avenue, access to this new dwelling would be gained from Scrapsgate Road via the creation of a new access.
- 2.03 The new dwelling would provide three bedrooms and a bathroom on the first floor with a living room, kitchen/dining room and toilet on the ground floor. There would be an irregular section of private amenity space to the south side of the new dwelling which would extend towards Sunnyside Avenue. There would also be hardstanding to the front of the new dwelling, facing Scrapsgate Road, which would accommodate the off road parking of two cars.
- 2.04 The dwelling would measure 11m in width by 9.2m in depth, with a height to eaves of 2.4m and an overall height of 6m.
- 2.05 The existing bungalow, 2 Sunnyside Avenue, would remain and would maintain its existing parking arrangement but would lose a section of its amenity space to the side.

## **3.0 PLANNING CONSTRAINTS**

- 3.01 Environment Agency Flood Zone 3

## **4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).
- 4.02 Development Plan: CP3, CP4, DM7 and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan 2017"

**5.0 LOCAL REPRESENTATIONS**

5.01 No comments have been received from local residents.

**6.0 CONSULTATIONS**

6.01 Minster Parish Council support the application. No reasons for support were given. However the following comments in relation to the application were submitted on the original consultation:

*“Minster-on-Sea Parish Council's support is subject to the revision of parking and access arrangements to obviate the need to reverse into the road. Bearing this in mind, the Parish Council asks the Case Officer to share this information with the Highways Authority (HA) and ask for it to review its position to ensure there are no material highway safety risks” (27/07/18)*

The applicant submitted amended plans and the Parish Council responded with the following comments:

*“Minster-on-Sea Parish Council is pleased the revisions resolve the parking issues” (17/08/18)*

When contacted for the reason that support was given for the application as the planning department were seeking refusal, the Parish Council responded with the following comments:

*“Minster-on-Sea Parish Council's position submitted 17 August 2018 remains unchanged.” (07/09/18)*

6.02 Natural England commented as follows: *“Natural England is satisfied that the proposal will mitigate against the potential effects of the development on the site(s) and that the proposal should not result in a likely significant effect.”*

6.03 KCC Highways commented as follows *“development proposal does not meet the criteria to warrant involvement from the Highway Authority”*

6.04 I am awaiting the comments of the Environment Agency and will update Members at the Meeting.

**7.0 BACKGROUND PAPERS AND PLANS**

7.01 Application papers and drawings referring to application reference 18/503008/FULL.

**8.0 APPRAISAL**

**Principle of Development**

8.01 The application site is situated within the defined built up area boundary of Minster where the principle of development is acceptable subject to relevant policy considerations and local amenity impacts.

**Visual Impact**

8.02 Sunnyside Avenue is characterised by a mixture of detached and semi-detached properties consisting of bungalows and two storey dwellings. I therefore do not

consider that the addition of a two storey dwelling would be out of place in the streetscene. I have no concerns over the proposed materials as there is a variety of design also present.

- 8.03 Whilst the new dwelling doesn't follow the building line of Sunnyside Avenue it would follow the general building line of Scrapsgate Road with dwellings fronting towards the west and being accessed via Scrapsgate Road.

### **Residential Amenity**

- 8.04 As the site is a corner plot there is no directly adjacent neighbour to the west of the property therefore it is the impact on the existing dwelling no. 2 Sunnyside Avenue that must be considered.
- 8.05 There is one window proposed to the rear elevation of the new dwelling, facing no. 2 Sunnyside Avenue, however this serves a toilet and therefore I consider that there are no overlooking concerns from this perspective as the window would be obscure glazed. I note that the windows proposed on the new dwelling to the front and side elevations are all in excess of 21m from other neighbouring dwellings and therefore I do not foresee any significant overlooking issues as a result of this development.
- 8.06 Although I do not have any concerns in relation to overlooking, I am concerned over the potential overbearing impact that the new dwelling will have on no. 2 Sunnyside Avenue. I consider that although the proposed dwelling would be 1.8m from the shared boundary that due to the orientation of the existing bungalow, with its narrow private amenity space being located to its western side, that the new dwelling will create a sense of enclosure and have a detrimental impact on the residential amenity of the occupiers of no. 2 Sunnyside Avenue. As a result the occupiers of 2 Sunnyside Avenue will essentially have a two storey dwelling just 5m away from what can be described as their "rear elevation". I consider that this would result in poor outlook, and would be overbearing for the occupiers of this dwelling and that this would amount to a reason for refusal.
- 8.07 Whilst in principle the erection of a dwelling of this nature in this setting is appropriate I do not believe that the irregular shaped plot is capable of accommodating both dwellings in the given arrangement as the plot is too small to maintain an acceptable standard of amenity for both dwellings and it would result in an overcrowded plot.
- 8.08 The proposed development would also significantly reduce the private amenity space of no. 2 Sunnyside Avenue, leaving the dwelling with private amenity space to the side measuring approximately 3.4-4m in depth by 21m in length, well below the Council's normal required minimum depth of 10m. I note that the applicant has submitted an additional document detailing the potential for the private amenity space to extend to the front of the dwelling. I do not consider that this overcomes the associated issues and would add that this amenity space would still be visible from the highway and would not be considered private. Furthermore the applicant's suggested alternative would result in a means of enclosure to the front of the dwelling, harmful to the character and appearance of the streetscene.

### **Parking**

- 8.09 The proposal includes the addition of a 3 bedroom house which is required by Kent Parking Standards to provide at least two off road parking space; this requirement is met in this instance as there is parking for two cars to the front of the proposed

dwelling. All of the parking for the existing dwelling would be located to the front of 2 Sunnyside Avenue.

### **Other matters**

8.10 The application site lies in Flood Zone 3 and I await the comments of the Environment Agency. I will update Members at the Meeting.

## **9.0 CONCLUSION**

9.01 I consider that the proposal is unacceptable as it will amount to an overdevelopment of the plot, giving rise to a poor outlook for the occupiers of 2 Sunnyside Avenue, would appear overbearing from this dwelling, and would result in a substandard provision of amenity space for no.2 Sunnyside Avenue. Subject to the comments of the Environment Agency, I therefore recommend refusal..

## **10.0 RECOMMENDATION –REFUSE for the following reasons:**

- (1) The proposed dwelling, by virtue of its scale and location on the plot, would have an overbearing impact and would create a sense of enclosure, giving rise to loss of outlook, harmful to the residential amenities of the occupiers of no. 2 Sunnyside Avenue. The proposal would therefore be contrary to policies CP4 and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan 2017".
- (2) The proposed development and the subdivision of the site, result in a substandard provision of private amenity space to the existing dwelling, harmful to the residential amenities of the occupants 2 Sunnyside Avenue. The proposal would therefore be contrary to policies CP 4 and DM 14 of "Bearing Fruits 2031: The Swale Borough Local Plan 2017".

### **The Council's approach to this application:**

In accordance with paragraph 38 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 has 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.





<b>3.2 REFERENCE NO - 18/503875/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion of barn to residential dwelling and holiday let, including demolition of existing lean-to and erection of replacement single storey extension.			
<b>ADDRESS</b> Park Farm Throwley Road Throwley Faversham Kent ME13 0PG			
<b>RECOMMENDATION - Refusal</b>			
<b>REASON FOR REFERRAL TO COMMITTEE - Support from Parish Council</b>			
<b>WARD</b> East Downs	<b>PARISH/TOWN COUNCIL</b> Throwley	<b>APPLICANT</b> Mr & Mrs D. Bridgford <b>AGENT</b> Vernacular Homes Ltd	
<b>DECISION DUE DATE</b> 17/09/18	<b>PUBLICITY EXPIRY DATE</b> 17/08/18		
<b>RELEVANT PLANNING HISTORY for this barn</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/88/273	Change of use to small joiner/carpentry workshop	Approved	08/04/1988
<b>RELEVANT PLANNING HISTORY for Park Farm – the adjacent house</b>			
16/504981/FULL	New study in loft space of detached garage incorporating new dormer windows, rooflights and external stairs	Approved	16/08/2016
SW/95/506	Front extension to form playroom	Approved	25/07/1995
SW/90/119	Erection of detached garage	Approved	08/03/1090
SW/89/1486	Erection of single and two storey extensions and detached garage	Approved	01/12/1989
SW/85/937	Extension to living room, kitchen and bedrooms	Approved	12/03/1986

**1.0 DESCRIPTION OF SITE**

1.01 Park Farm itself is a very isolated farm house set within the Kent Downs Area of Outstanding Natural Beauty (AONB) and accessed from a long private track. Nearby are just a small bungalow and the traditionally designed barn the subject of this application. The site itself is well of the road but a public bridleway runs directly alongside the house and barn. The house itself has been considerably extended, and also features a modern detached garage/outbuilding to the south of the property. The barn is located to the north of the farmhouse and there is evidence that at one time a very large modern style agricultural building was erected over what appears to have been an enclosed yard set between the two buildings; effectively linking them together. The farmstead arrangement has changed over the years with the changing fortunes of the farm, the large linking building has been removed, and now all that remains is the house and barn. The barn, with its smaller lean to extensions on the north and west elevations, sits some 25m from the house, with access and a large area of hardstanding to its northern side.

- 1.02 The L shaped barn is large in size (approximately 22m x 17m overall), has a first floor level across part of the main barn and in the smaller southern wing, and was used by the previous occupants of Park Farm as domestic storage and as a home office. Access to the barn is via the track from the road, around the house and onto a track (now largely overgrown through disuse) that also serves as part of the public bridleway.
- 1.03 The planning history of the barn itself shows that in 1988 a previous occupant of the farmhouse applied for planning permission to use the barn as a joinery/carpentry workshop, an application supported by the Kent Committee of the Council for small industries in rural areas (COSIRA). That application was approved.

## 2.0 PROPOSAL

- 2.01 The current proposal is for the demolition of the weatherboarded single storey extensions on the north and west elevations of the barn, and for the conversion of the main range of the barn (including the erection of a single storey extension) to a single 3 bedroom dwelling with a significant amount of double height space (over half the floor area); and for the conversion of the far smaller southern wing of the barn to provide a 2 bedroom holiday cottage.
- 2.02 Access to the new dwelling and the holiday cottage is shown to be to the south east of the site via what is described in the application as “existing gateway access” and then via a 50m long access track to a parking area 35m from the barn, with the creation of a pedestrian footpath from there to the barn.
- 2.03 The application is supported by a Planning, Heritage, Design and Access Statement; a confidential Appendix relating to possible holiday let income; a heavily redacted letter said to be from a Chartered Surveyor; and an Ecological Survey. From these I draw the following points;
- The barn is part of the garden of Park Farm and was used by previous owners as a shed, storage for a light aircraft, as a model railway room, and as a home office
  - The applicants consider the building too large for their needs
  - The eastern wall is in danger of collapse; the proposals include repairs
  - Conversion to a dwelling represents the only possible viable use of the building
  - Part of the building will be used as a holiday let
  - The NPPF supports isolated new homes in the countryside in specified circumstances including where that would re-use a redundant or disused building and lead to an enhancement to the immediate setting, or where it would represent the optimal use of a heritage asset and secure its future
  - If the building were not in the AONB it would benefit from Permitted Development rights for conversion to a dwelling
  - Planning policy favours commercial uses of such buildings unless undesirable or unsuitable, but an industrial use would be unsuitable and impractical, and office use would generate high traffic volumes and have adverse landscape impact. Any such use would lack the necessary parking provision
  - Even full conversion to holiday let use assuming all year round occupancy at premium rates would be financially questionable
  - A marketing exercise at a nearby barn showed that there was strong economic argument to pursue single unit residential use on that barn
  - The proposals will improve the appearance of the barn, which is part of a traditional farmstead layout

- The proposals are similar to those recently approved nearby at Church Farm for demolition of a large barn and conversion of smaller barns to a dwelling and holiday accommodation
- The conversion will not overlook Park Farm itself
- A survey in February 2018 showed potential for bats, great crested newts and reptiles to use the barn/site and further investigative surveys are suggested

### **3.0 PLANNING CONSTRAINTS**

3.01 Area of Outstanding Natural Beauty KENT DOWNS

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

4.01 The National Planning Policy Framework (NPPF) JULY 2018: Paragraphs 8 (three overarching objectives for sustainable development), 11 (presumption in favour of sustainable development), 78 and 79 (rural housing), 83 (supporting a prosperous rural economy), 124 (good design), 170 and 172, (conserving and enhancing the natural environment) and 175 (habitats and biodiversity) are all relevant here.

4.02 Policies ST1, ST3, DM3, DM9, DM14, DM24 and DM28 of Bearing Fruits 2031 Swale Borough Council Local Plan adopted 2017 are relevant. Policy DM3 in particular seeks to restrain residential use of rural buildings where this will reduce the potential for rural employment and/or community facilities unless the site/building(s) is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable.

4.03 Supplementary Planning Guidance (SPG): The Conservation of Traditional Farm Buildings This document reflects the rich heritage of agricultural buildings in Swale, not all of which may be suitable for modern agricultural methods. It seeks to guide developers into uses that preserve the importance of such buildings both in terms of use and design. At paragraph 3.3 it suggest new uses that enable the existing structure and detailing to remain as undisturbed as possible, and to encourage uses other than residential use. In terms of design, the advice is to keep as much as possible of the original structure as the main purpose of conversion is to ensure preservation of such structures.

### **5.0 LOCAL REPRESENTATIONS**

5.01 The Faversham Society considers that the application is acceptable because it would restore the building in a sensitive way; because planning permission is only required because the site in the AONB; and because conversion to a house maintains the appearance of the building by the inclusion of external shutters to minimise the extent of visible glazing.

### **6.0 CONSULTATIONS**

6.01 Throwley Parish Council supports the application stating that they have examined the above application and fully support the conversion and see this plan as an excellent proposal to clear up a rather dilapidated collection of buildings.

6.02 Swale Footpaths Group notes that the adjacent public bridleway would not be affected

6.03 The Environmental Health Manager has no objections to the proposal in principle but would recommend a condition restricting construction hours.

## 7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers for applications 18/503875/FULL, SW/88/273, 16/504981/FULL, SW/95/506, SW/90/119, SW/89/1486 and SW/85/937.

## 8.0 APPRAISAL

- 8.01 The main considerations in determining this application are the acceptability of conversion of a former agricultural barn to residential accommodation in this isolated location, along with the provision of a 2 bedroom holiday let and the impact of the works and future use on protected species, the amenity of the adjoining house, and impact on the character and appearance of the countryside and the AONB.

- 8.02 Local Plan policy states that development proposals will be supported in accordance with the settlement hierarchy criterion which is set in Policy ST3. This site falls within tier 6 where;

*“All other settlements and sporadic buildings are considered to sit within the open countryside where the primary objective will be to protect it from isolated and/or large scales of development.”*

Policy ST3 also states that;

*“At locations in the open countryside, outside the built-up area boundaries development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.”*

- 8.03 Additionally Policy DM3 (The rural economy) states that;

*“Planning permission for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building(s) is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable”*

- 8.04 These policies do not seek a blanket ban on housing in the countryside or other development either, but they seek to ensure a thriving rural economy by ensuring that the priority for the reuse of rural buildings should be for business uses or community uses. This approach is entirely consistent with section 6 of the NPPF entitled ‘Supporting a prosperous rural economy’ in which para 83 states;

*“Planning policies and decisions should enable:*

- *the sustainable growth and expansion of all types of businesses in rural areas, both through conversion of existing buildings and well designed new buildings;*
- *the development and diversification of agricultural and other land-based rural businesses;*
- *sustainable rural tourism and leisure developments which respect the character of the countryside; and*

- *the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.”*
- 8.05 In addition the Council has an adopted Supplementary Planning Guidance (SPG) entitled ‘The Conservation of Traditional Farm Buildings’ which lists potential uses for disused agricultural buildings, and suggests the following *“a community building, agricultural or other use, craft work shop/studio, farm shop, light business use, professional practice, recreation building, restaurant or tourist accommodation”*.
- 8.06 The SPG remains a material consideration and was adopted as part of the new Swale Borough Local Plan. It makes clear that the best and least intrusive use for a former agricultural building is the use for which it was intended. It accepts that this is not always possible, and looks to other uses that would have less impact upon the character of the countryside than a residential use. Commercial uses or open plan office uses for example, can often utilise existing layouts and openings without the need for significant alteration. In addition residential uses tend to have more impact upon the rural landscape due to the demand for gardens, parking, garaging and other domestic paraphernalia.
- 8.07 The applicants have employed a variety of arguments to suggest why this proposal is the most suitable, indeed the only, viable future for the building. I will first respond to that echoed by the Faversham Society – that is that IF the building were not in the AONB it would benefit from Permitted Development rights for conversion to residential use. This is a distraction from the real issues here. The building IS in the AONB and such rights do not apply here. There is no fall-back position that merits consideration and I advise Members to give this matter very little weight.
- 8.08 In an attempt to demonstrate that the barn would have no demand for rural employment and/or be used for community facilities, and that its use for such would be undesirable or unsuitable, the application provides confidential (heavily redacted) information which appears to be from a firm of Chartered Surveyors (unnamed). This provides general advice on how the building might suit office uses, but provides no likely rental values, costings or construction work and does not indicate that such use would not be viable. It does suggest that a significant volume of traffic might be generated, but it also assumes “normal” office employment densities, which seems unrealistic for such a location.
- 8.09 An uninsulated industrial use for building was considered and comments are made suggesting that industrial work here would be a fire hazard and would not be financially viable (although no build costs, ongoing costs or likely rent etc are provided to substantiate this claim) and that parking facilities would radically change the landscape. The submission ignores the large area of hardstanding adjacent to the north side of the barn as possible parking provision. It is further claimed that such low key uses would not result in the building being secured for the future and the deterioration of the building would continue. The submission acknowledges that local policy encourages market testing but argues it has been done for a listed barn at Bells Forstal and as such there is *“no sense in repeating the same marketing exercise”*
- 8.10 This information has been reviewed and considered in light of the above policy context and I consider that the submission does not meet the criteria of the policy by demonstrating that there is no demand for an alternative use to residential. I consider the financial viability argument is lacking in detail for all suggested options and would

appear to disregard all options other than residential with its quick return on any investment, as not being “viable” but I do not consider this is sufficient for it to be considered as the optimal viable use of the building.

- 8.11 The inclusion of holiday let accommodation is in line with local policy. However, even the confidential holiday let information does not include costings for the conversion and/or running of the accommodation; but the applicants suggest that even fully occupied with premium rates (as might be commanded here in view of the rural location close to Canterbury and the coast) such use would be less viable than conversion to one dwelling and a small holiday let – which presumably is viable. In fact the isolated location appears similar to other multiple barn conversions for holiday accommodation, and there is no evidence that such a development which is estimated to bring in many thousands of pounds per year per unit of accommodation would not work well here, or fail to cover conversion and running costs. I consider that there is insufficient evidence that alternative realistic uses at this site have been investigated to any significant degree to enable any firm conclusion relating to viability to be arrived at.
- 8.12 The explanation that previous marketing has been undertaken on a different barn in a different location is not sufficient. The submission makes no reference to any previous planning history for the site when in fact planning permission was granted in 1988 for this building to be used as a joinery and carpentry workshop and evidence suggests this was used for this purpose for a number of years. This indicates the building’s inherent suitability for a rural workshop use. No marketing with this kind of use has recently been undertaken.
- 8.13 I note the parallels the applicants make with the recently approved scheme at Church Farm, Throwley Road (17/505796/FULL) where Members approved the conversion of a barn to create a 2 bedroom house and the conversion of an adjacent shed to provide a farm office and an additional bedroom for a bed and breakfast business, along with the replacement of the large agricultural building with a smaller building to house a workshop and animal pens. As is always the case it is very difficult to draw parallels between applications as the site specific circumstances are never the same. At Church Farm, the demolition of a very large building which dominated the site, and was in close proximity to the Grade 1 listed Church of St Michael and All Angels Throwley and to three Grade II listed monuments in the church yard and the Grade II listed Church House was a clear and substantial benefit of the proposal, which Members felt sufficient to justify the decision. I do not see any such benefit arising from the current proposal.
- 8.14 I also do not consider the advice as set out within the NPPF lends support to the scheme. The NPPF, whilst clearly promoting the need to provide a wide choice of quality homes, does not allow this at all costs. The golden thread running through the document is the presumption in favour of sustainable development. Paragraph 55 (now encompassed within paragraphs 78 and 79 of the NPPF July 2018) still retains the principle of housing being located where it enhances or maintains the vitality of rural communities. Thus it raises the question as to whether a new house at his location would enhance or maintain the vitality of rural communities, given this proposal is so small in size its contribution would be negligible and further as it is disconnected from any of the local settlements this cannot be considered the case here. Thus it falls at the first hurdle in terms of consideration of this as a sustainable development.
- 8.15 The applicant argues that whilst the NPPF (paragraph 79) requires planning policies and decision to avoid isolated homes in the countryside they consider that two points

made are supportive in that the scheme will “*represent the optimal viable use of a heritage asset and would secure its future*” and “*where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting*”

- 8.16 My view is that, the fact that the residential conversion provides the quickest return on an investment does not represent its optimal viable use particularly given the need for very substantial alterations to the building required for such a use, and the lack of convincing investigation into alternative options. The applicants argue that the proposal will *lead to an enhancement to the immediate setting*. However the removal of the weatherboarded, modern additions on the north and west elevations, given its current state, could be removed at any point and would benefit the appearance of the barn. Also the area is not unattractive, it has a character and appearance one would expect to find in such an isolated rural location. The areas of hardstanding or any other elements on the site or the barn are within the applicants’ ownership and if deemed to be unattractive or requiring remedial works could also be removed or carried out at anytime. The deterioration in the appearance of the site and its buildings should not be linked to the development of the barn.
- 8.17 In my view the current case has close parallels with a recent case dismissed at appeal in Swale for conversion of a barn to a dwelling. This considered the relationship between the creation of an isolated dwelling, the re-use of a rural building and the advice in paragraph 55 (now 79) of the NPPF. The conclusion was the creation of a new dwelling in an isolated position was not the optimal use for the building because that does not mean the most attractive from a commercial point of view. I have attached the full decision as an Appendix to this report and Members will note that the decision is taken in the light of policies of the recently adopted Local Plan.
- 8.18 Furthermore, the proposed access arrangements, whilst making use of an existing gateway, appear to require the creation of a significant length of new roadway and parking area, despite a suitable existing access, gateway and hardstanding areas being available. The new driveway is described as “Existing Track” there is little to see on the ground and the new driveway will appear intrusive and unnecessary which will not conserve the natural beauty of the AONB.
- 8.19 The application includes a single storey extension to the west elevation of the barn (where there is a current extension which is to be demolished) to accommodate the residential use which, given the size of the barn does not seem to me to be necessary, and is contrary to the Council’s SPG which remains a material consideration and was adopted as part of the new Swale Borough Local Plan 2017. The value of the barn is in its agricultural appearance and I am concerned the an extension and the insertion of additional fenestration proposed here dilutes this character and appearance and would lead to a domesticated appearance contrary to adopted SPG and design and policy.
- 8.20 I acknowledge there would be limited benefits of the proposed development, in that it would result in one additional dwelling to the local stock and have associated economic, social and area enhancement benefits. However as a single dwelling, these benefits would be very modest so I can afford them very little weight in favour of the proposed development. Thus I consider this is not sufficient to outweigh the significant harm in relation to the settlement strategy, accessibility to services and impact on the vitality of the area. The site is located some distance from any local service areas or town centres and prospective residents and visitors/holiday makers would not easily be able to normal everyday services such as school, shops, doctors,

pubs. In addition, the site is located along unlit narrow country lanes without footpaths. This would result in any potential occupants likely having to rely on a car to access any services and amenities for everyday living. This proposal to change the use of this agricultural barn to a residential dwelling would conflict with the development plans aim of restricting unsustainable and undesirable development in rural areas and despite the small proposed holiday let accommodation would not help to secure a thriving rural economy.

- 8.21 I see no likelihood of the proposals significantly prejudicing the amenities of Park Farm itself due to the distance between the buildings.
- 8.22 Finally, the Ecological Survey was undertaken in February 2018 which is not a time of year recommended for bat or great crested newt surveys. Thus the survey recommends further work in respect of bats, newts and reptiles. Accordingly, at this time it is not possible to know whether protected species are likely to be affected by the conversion, or what mitigation measures might be possible. Until those matters are known my view is that it would be safe for the Council to grant planning permission as not all material planning considerations can be considered. It is not advised to grant planning permission with a condition requiring an ecological survey to be carried out, which the application appears to anticipate. Paragraph 175 of the NPPF advises that where significant harm to biodiversity cannot be avoided or compensated for, planning permission should be refused. Natural England's Standing Advice on determining applications is that if a survey is inadequate planning permission should be refused. In this case, the survey is inadequate, and this represents a sound reason to refuse the application.

## 9.0 CONCLUSION

- 9.01 Whilst I appreciate, that the building in question appears to be of some age it is by no means in its original condition and I do not consider it stands up to the test of conversion to residential use for the sake of its own preservation. Additionally, there is not sufficient evidence to support residential use as being its optimal viable use, or that it is required to enhance its immediate setting. As a separate dwelling, in this isolated, unsustainable rural location it remains unacceptable in principle.

## 10.0 RECOMMENDATION –REFUSE for the following reasons:

- (1) The proposal to convert the existing barn to a residential dwelling fails to demonstrate that the building could not reasonably be put to an alternative use for community or economic purposes to revitalise the rural economy, such uses being in accordance with the Development Plan and the NPPF. In addition the creation of a new dwelling situated outside any built-up area boundary in the countryside and in a remote and wholly unsustainable location, with limited facilities will result in an unsustainable manner with consequent heavy reliance on private transport and would represent an undesirable encroachment of development in the countryside in a manner harmful to the character and amenities of the area. As such the proposal is contrary to policies ST1, ST3 and DM3, of Bearing Fruits 2031 Swale Borough Local Plan 2017 and the associated SPG on the Conservation of Traditional Farm Buildings.
- (2) The proposal to create a significant new area of hardstanding to provide access and car parking areas will be harmful to the visual amenities of the area and detrimental to conservation to the natural beauty of the Kent Downs AONB contrary to policy DM24 of Bearing Fruits 2031 Swale Borough Local Plan 2017.



- (3) The applicants' ecological survey does not adequately confirm that protected species will not be adversely affected by the development, nor can appropriate mitigation measures yet be proposed to deal with them. As such the development is contrary to policy DM28 of Bearing Fruits 2031 Swale Borough Local Plan 2017.

**The Council's approach to this application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

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

It is noted that the applicant/agent did engage in any formal pre-application discussion.

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 1




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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: **1<sup>st</sup> December 2017**

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**Appeal Ref: APP/V2255/W/17/3177416**

**Brook Hall House, Waterham Road, Hernhill ME13 9JH**

- 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 Martin Parsons against the decision of Swale Borough Council.
  - The application Ref, 16/507606/FULL dated 7 October 2016, was refused by notice dated 21 December 2016.
  - The development proposed is conversion of existing outbuilding into 1No dwelling house.
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### Decision

1. I dismiss the appeal.

### Procedural Matters

2. The judgment in the High Court case of Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin) was issued after the site inspection but before the Decision was written. The judgment concerned the definition of 'isolated homes in the countryside' as referred to in paragraph 55 of the National Planning Policy Framework. Since the exceptions set out in the bullet points to that paragraph had been referred to by both of the parties in submissions to this appeal, opportunity was given for further submissions in light of the judgment.
3. A listed building consent application had been made for the works, on the basis that the building is curtilage listed along with the main house and this was also refused (Ref: 16/507607/LBC) but no appeal has been made on that refusal. Whilst the Council's Questionnaire to this planning appeal states at 13.a. that the development does not involve the demolition, alteration or extension of a listed building, this is plainly not the case. On the evidence, the building should be regarded as a curtilage listed building and hence a designated heritage asset.

### Main Issues

4. With the above in mind, the main issues are;
  - The effect of the proposal on the aims of policy on development in the countryside.
  - The effect of the proposal on the significance of listed buildings.

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## Reasons

### Policy

5. 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 ST1 seeks to deliver sustainable development that supports a prosperous rural economy, especially for sustainable farming and tourism and which accords with the Local Plan Settlement Strategy, which is set out in Policy ST3. That Strategy states that in the open countryside development will not be permitted unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. The supporting text provides for some minor development for the social, economic or environmental health of a community, but this is not necessary to meet the Local Plan housing target.
6. The rural economy is the subject of Policy DM3 which states that planning permission for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. The wording continues that proposals should firstly consider the appropriate re-use of existing buildings, and result in no significant harm to the historical, architectural, biodiversity, landscape or rural character of the area, among other matters. Valued landscapes are to be conserved and enhanced under Policy DM24, and Policy DM32 concerns the preservation of listed buildings.
7. Policy CP2 promotes sustainable development, with new development being located in accordance with Policies ST1 to ST7 which minimises the need to travel for employment and services and facilitates sustainable transport. Policy CP3 on delivering a wide choice of high quality homes makes clear that development proposals will, as appropriate, be steered to locations in accordance with Policy ST3.
8. The Council has published Planning and Development Guideline 3 'The Conservation of Traditional Farm Buildings' stated to have been adopted for development control purposes in December 1992. The council draw attention to the possible uses that such buildings could be put to; 'a community building, agricultural or other use, craft work shop/studio, farm shop, light business use, professional practice, recreation building, restaurant or tourist accommodation'. The Guidelines do acknowledge however that the most attractive alternative to agricultural use, from a purely commercial point of view, might be a residential use, but continues that this is seldom the best way to conserve the building in anything like its original form.
9. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
10. The Framework sets out the core planning principles that include recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it, as well as the conservation of heritage assets.

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Paragraph 55 makes clear that new isolated homes in the countryside should be avoided unless there are special circumstances. Paragraph 132 of the same document states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

*Development in the Countryside*

11. The Local Plan has only recently been found sound and been adopted and although the housing figures may have only a short life before being re-assessed as asserted by the appellant, the conclusion now is that the Council are able to demonstrate a 5 year supply of housing land as required by the Framework. The proposal is, as a result, not able to rely on paragraphs 49 and 14 of that document, although windfalls would be required, subject to compliance with the Development Plan.
12. The appellant has made a case in favour of permission by way on an exception in paragraph 55 of the Framework. The recent court case referred to under 'Procedural Matters' concerned a site that was within a village that did not have an adopted village envelope, and hence the site was within the countryside. The judgement was that the proposal in that case was not for a new isolated home in the countryside and the avoidance of such development in principle, together with the exceptions, did not apply.
13. The present appeal case concerns a building that is isolated from any settlement or significant cluster of built form, albeit associated with an existing home. There are a very limited number of other buildings nearby and the character of the surroundings, whilst heavily influenced by the main road, is of a remote rural area. The proposal should, as a matter of fact and degree, be considered as being for a new isolated home in the countryside, and consequently, the applicability of the exceptions should also be considered.
14. In fact only 2 of the exceptions at paragraph 55 could possibly apply to this case and that concerning redundant or disused buildings does not apply as the building is in a beneficial use as domestic storage. The other is where such development would represent the optimal viable use of a heritage asset.
15. The Council is critical of the location of the proposal for residential use, and its access to services, employment and the like. The location is adjacent to a busy main road, but the access onto and off it from Waterham Road is with the eastbound carriageway only and this fast dual carriageway road is not at all conducive to pedestrian use.
16. The appellant refers to a 'Spar' shop at the services to the east and it was noted that this is on the same side of the main road as the site. Access by car could be made by way of the poor turning onto the main road, but more safely by way of the longer Highstreet Road route, and the latter would be the best walking route. That shop would provide a range of day-to-day essentials, but with little choice and many weekly needs would be a car journey away. The site is not well-located and does not have ready access to a range of services other than with the likely use of a private vehicle. As a result, due to the location of the site the proposal does not accord with Policy CP2/6 on sustainable forms of transport, as the occupiers would be significantly reliant on a private vehicle for most journeys.

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17. The Council's clear preference is a tourism use and that would be in line with Policy ST1 and the traditional farm building Guidelines. Having mind to the proximity of the principal listed building and the nature of the surrounding area, that appears a more appropriate use than an employment one, which could involve more parking and activity that could undermine the tranquillity and rural isolation that is a significant aspect of the setting of the listed house particularly that part further from the main road. In the event, it is only a tourism use that has been addressed to any level of detail by the appellant with regard to viability.
18. Turning then to the viability appraisal for a tourism use, the capital costs may well be correct, as at least the total figure is broken down, whilst the revenue relies on 100% occupancy of each of the supposed 3 units. Such a high occupancy rate in this location does appear unrealistic, and although the building and its immediate setting is undoubtedly attractive, the surroundings militate against a premium rate being charged. However, there is little to compare the rate assumed with other premises on offer in the likely catchment area. The outgoings appear unusually high and are not justified.
19. No further information has been provided on which to judge the visual effect of such a tourism use, other than the appellant's assertion that it would be more harmful. The effect on the landscape quality, and the character and appearance of the area would likely differ between a tourism use and a residential one, particularly as it is clear from the appellant's submissions that a realistic occupancy rate for tourism would be less than as a full-time dwelling. The use of the curtilage and any items such as domestic paraphernalia could be more harmful with a residential use, but it is possible that there would be less parking and less vehicular movements. On balance the effect on the character and appearance of the area from the building becoming a full-time home as opposed to a tourism use would be only marginally more harmful, and weight applies to the present use and the activity that this must cause.
20. Taking all of the foregoing into consideration, it is not possible to conclude that the residential use as a new isolated home in the countryside would represent the optimal viable use of the heritage asset, as required by paragraph 55. Whilst it may well be the most advantageous financially, there are real doubts over the figures that purport to show the unviability of the tourism use, particularly the seemingly high running costs, and there is no evidence of market testing or compelling proof that the location is unsuited to such a use.
21. As a result, the exception in paragraph 55 has not been proved and the policies that seek to avoid the development of new homes in the countryside and which are in favour of sustainable locations should prevail. The proposal is contrary to the aims of Policies ST1, ST3, CP2 and CP3, as well as Paragraph 55 of the Framework.

#### *Listed Building*

22. The proposed residential use has been sufficiently detailed for this planning appeal, and the development would have little if any adverse effect on the external features of the curtilage listed building. The tightly drawn red-line site area with a post and rail fence and hedging delineating the proposed new curtilage would appear as an acceptable feature within the setting of the principal listed building and could be secured by condition.

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23. It is not possible to conclude whether or not the Council's preference for a tourism use would be more or less intrusive to the listed buildings due to there being no drawings of the works necessary, but subject to the grant of listed building consent, for which full internal details would be expected, the effect on designated heritage assets of the proposed residential use would be acceptable. The provisions of the test in the 1990 Act as well as the Framework are met and the proposal would accord with Policy DM32 and the guidance on traditional farm buildings.

#### **Planning Balance and Conclusions**

24. Those matters counting against the proposal are the countryside location and the poor accessibility with a likely reliance of vehicular journeys contrary to the Development Plan policies previously cited. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

25. Whilst an employment use appears unsuitable having regard to Policy DM3 and the heritage considerations, the viability evidence submitted against the policy-compliant tourism use is lacking in detail. The material consideration of the paragraph 55 exception, indicating a residential use contrary to the recently adopted Development Plan, should not prevail on that evidence. It is not possible to conclude that residential use is the optimal viable use of a heritage asset, as that phrase should not be taken to mean the most attractive alternative from a purely commercial point of view.

26. On the evidence presented, the case for residential use in the countryside as an exception to Development Plan and national policies of restraint, has not been made and for the reasons given above it is concluded that the appeal should be dismissed.

*S J Papworth*

INSPECTOR



18/503875/FULL - Park Farm, Throwley Road  
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<b>3.3 REFERENCE NO - 18/503385/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
New 3 bedroom self-build eco-home dwelling with garage and other associated amenities, to be built on the site of an existing dwelling and other buildings (already demolished).			
<b>ADDRESS</b> Little Miss Acres Farm Butlers Hill Dargate Kent ME13 9QH			
<b>RECOMMENDATION - Refuse</b>			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council support. Support from local residents			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Hernhill	<b>APPLICANT</b> Dr Victoria Clayton <b>AGENT</b> Ms Miriam Layton	
<b>DECISION DUE DATE</b> 29/08/18	<b>PUBLICITY EXPIRY DATE</b> 03/08/18		
<b>RELEVANT PLANNING HISTORY for the application site field</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/09/0026	Siting of two mobile field shelters for the use of grazing animals.	Refused	05/03/2009
SW/04/0506	Plant nursery containing 2 polytunnels with no access to the public, including use of the barn across the road for storage	Withdrawn	
SW/04/0064	Plant nursery consisting of polytunnels, equipment store, staff room and portaloo.	Withdrawn	
SW/77/0334	Proposed farmhouse and garage in connection with an agricultural holding	Approved with agricultural occupancy condition	01/06/1977
SW/76/490	Erection of agricultural dwelling with office	Withdrawn	
NK/9/68/103E	Erection of farm house and garage (reserved matters)	Approved	26/02/1973
NK/9/68/103D	Erection of three bedroom bungalow and farm office (reserved matters)	Approved	16/03/1970
NK/9/68/103A	The erection of a replacement agricultural dwelling. (outline)	Approved with agricultural occupancy condition	16/09/1969
NK/9/68/103	Demolition of existing cottage and replacement by new dwelling and use of land as a site for the erection of new dwelling for farm manager.	Refused	15/09/1968
<b>RELEVANT PLANNING HISTORY for the applicant's adjoining land</b>			
SW/11/1013	(1) Change of use of land to keeping	Approved	01/12/2011

	of horses (2) Erection of 'American Barn' (3) Creation of vehicle access (4) Creation of all weather riding area		
<b>RELEVANT PLANNING HISTORY relating to appeals dismissed for housing on other sites in Dargate</b>			
15/505467/OUT	Outline (All matters reserved) - Redevelopment of site for 6 dwellings ( <i>Chapel Plantation Nursery</i> )	Appealed for non-determination. Appeal Dismissed	17/06/2016
15/510551/FULL	Conversion of existing redundant outbuilding into single dwelling. ( <i>Brook Farm</i> )	Refused. Appeal Dismissed	02/09/2016
SW/14/0391	Proposed dwelling to replace former cottage & associated works. ( <i>Acorns, Butlers Hill</i> )	Refused. Appeal Dismissed	26/11/2014

## 1.0 DESCRIPTION OF SITE

- 1.01 The site consists of part of the road frontage of an open field which adjoins the applicant's land on which planning permission was granted for keeping of horses and the erection of stables in 2011. It is situated along a quiet, narrow, country lane some considerable distance outside any built-up area. Dargate is a hamlet which boasts only a public house, whilst there is a small convenience store, coffee shops and a travel lodge at the petrol stations on the Thanet Way, over a mile away from the site by road. Access to most local facilities requires a car journey.
- 1.02 The site is part of a designated Area of High Landscape Value (Swale Level) as defined in the recently adopted Local Plan, but the area as a whole has been under pressure for housing developments in recent years, some examples of which are referred to elsewhere in this report. The site is adjacent to the Hernhill – Dargate conservation area which extends up to include the house on the opposite side of the lane; a lane designated as a protected rural lane in the Council's adopted Local Plan.
- 1.03 The site itself has a peculiar planning history having once been the site of a house, which was demolished between 1968 and 1975, with planning permissions for a new agricultural dwelling having been granted in 1968 and 1977 but apparently never implemented. The particular location of the proposed house is on or very close to the location of the original house and outbuildings (none of which now remain), as indicated on an extract from the 1907 Ordnance Survey map provided by the applicant.

## 2.0 PROPOSAL

- 2.01 The proposal is for the erection of a self-build three bedroomed two-storey house to Passivhaus standard, with a detached garage. To the front, the proposed property would be fairly orthodox in design in brick and tile hanging, whilst at the rear there are some more contemporary examples of architectural styling, including bolder glazing, a balcony and black weatherboard cladding. Pastel green external joinery is proposed. The house would have front and rear amenity spaces, and the detached double garage would be situated to one side of the house but closer to the lane than the house. It is proposed to plant a hedge across the site frontage.

- 2.02 The proposal is accompanied by a detailed Design and Access Statement, which explains that the applicant keeps horses on the adjacent site, and has bought the application site and wider field in 2017, since when she has gone to some time and expense in generally tidying up the site, including the removal of a considerable amount of detritus left by the previous landowner, and boundary treatment changes and new planting.
- 2.03 The Statement notes that there was a previous dwelling on the site, which appears to have existed from the mid C19 to the middle/late C20. The statement suggests that this property was removed from the site in the late 1960s, under planning reference NK/68/103A, and that its foundations can still be traced beneath the soil. In 1977, a new dwelling was approved on the site under planning reference SW/77/0334. However, that dwelling, which was approved the use of an agricultural worker only (condition 5) and the planning permission was never implemented. The applicant maintains that the site now constitutes previously developed land as the foundations of the original house still affect the growing quality of the soil, meaning that grass does not grow well there and the spot is covered in weeds.
- 2.04 The applicant has suggested that the character of the lane is that of sporadic houses and buildings, meaning that the proposed house will not adversely affect the character and amenities of the area. In addition, she suggests that the house opposite is already well screened from views and that the proposed house will also be well screened by new planting, not affecting local views towards the woodland behind. The site already has a road access, and the applicant says that the development will not increase traffic as she already visits twice a day to feed and look after her horses; and that local amenities are within easy reach at between 1.1 and 4.5 miles away, with a bus stop close by
- 2.05 The proposal also gives details of how the proposed dwelling would be a low carbon eco-home with large, shaded, south facing windows, smaller north facing windows, and features designed to gain, retain and store solar energy and reduce heat loss.
- 2.06 The applicant considers the proposal to constitute ‘affordable housing’, as without this self-build proposal she, as a vet and a single mother could not afford to buy a property in the village close to her horses, and would have to remain living with her parents in Herne Bay. The applicant also suggests that the Council has a housing supply shortage which this development will assist with; but Members will be aware that this is not the true situation in terms of housing supply.
- 2.07 The applicant presents details of planning policies at length, including Government support for self-build projects, but I deal with policy issues below.

### **3.0 PLANNING CONSTRAINTS**

Adjacent to Conservation Area  
 Near to Listed Buildings  
 Outside established Built-up-Area Boundary

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

- 4.01 The National Planning Policy Framework 2018 (NPPF): Paragraphs 8, 11, 12, 79, 83 and 196

4.02 Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (Delivering sustainable development in Swale), ST3 (The Swale Settlement Strategy), ST7 (The Faversham area and Kent Downs Strategy), CP3 (Delivering a wide choice of high quality homes), CP4 (Requiring good design), DM7 (Vehicle parking), DM9 (Rural exceptions housing), DM11 (Extensions to, and replacement of, dwellings in the rural area), DM12 (Dwellings for rural workers), DM14 (General development criteria), DM24 (Conserving and enhancing valued landscapes), DM26 (Rural lanes), DM32 (Development involving listed buildings) and DM33 (Development affecting a conservation area) are all relevant here.

4.03 In my view the key policies here are ST1, ST3, ST7 and DM11, although others are of relevance. Policy ST1 seeks sustainable development which accords with the Plan's settlement strategy. This is set out in policy ST3 (see below) and this is a location where a new build house would not normally be approved unless related to a functional rural need as provided for by policy DM12. That case is not advanced here, but the application focusses on the history of the site and maintains that the site should be seen as previously developed, and thus policy DM11 applies.

4.04 Previously Developed (or brownfield) Land is defined by the NPPF as;

*“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”*

In my view the remains of the former buildings here have quite simply disappeared from view. The fact that they may still affect ground and growing conditions is not part of the above definition. I suggest that the site should not be considered to be previously developed land, or a windfall site, but instead as rising land within an open field in an isolated location within an area of high landscape value.

4.05 Policy DM11 of the Local Plan relates to extensions to, or replacement of existing dwellings, and states;

*“The Borough Council will permit the rebuilding of an existing dwelling in the rural area only if the proposed new dwelling is of a similar size and proportion, an appropriate scale, mass and appearance in relation to the original dwelling and location, or where it constitutes the most effective use of the land”.*

In this case the previous house is long gone, and cannot be considered to be existing. Current policy is not to approve new housing just because a house might once have stood here. The policy relates to existing dwellings only. Members might also wish to bear in mind that the previous approvals were only for agricultural dwellings in situations where a house would otherwise not have been approved, as witnessed by the planning conditions restricting occupation of the approved dwellings.

- 4.06 The NPPF at paragraph 79 advises against isolated new dwellings in the countryside other than in exceptional circumstances, none of which apply here. Nor is the development likely to support services in adjacent villages as suggested by paragraph 78 of the NPPF as there are very few such facilities and most need will be met at Whitstable or Faversham.
- 4.07 The applicant has also mounted a case for this proposal to be seen as affordable housing, on the basis that she will build it herself using local labour and contractors, in a location where she would otherwise be unable to afford to buy a house. The Council's policy for rural affordable housing schemes is DM9 which states;

***Rural exceptions housing***

*Planning permission for affordable housing to meet local needs in rural areas will be granted provided:*

- 1. The site accords with Policy ST 3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*
- 2. The site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community;*
- 3. A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*
  - a. an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*
  - b. a thorough site options appraisal; and*
  - c. a prepared statement of community involvement that has sought to include the significant input of the Parish Council.*
- 4. In addition, for schemes including unrestricted market houses/plots for sale, justification will be provided by the applicant:*
  - a. to demonstrate that a scheme not relying on market housing has been considered and why it has been discounted or considered to be unviable; and*
  - b. as to the number and type of houses proposed, which will be determined by the housing needs assessment and through an appraisal of viability to show the minimum provision of unrestricted market homes necessary to deliver a significantly greater proportion of local affordable homes for that site.*
- 5. Proposals will be subject to a legal agreement that provides for the permanent control and management of any affordable housing to ensure its long-term retention for local need.*

This policy is compatible with NPPF advice (paragraph 77) but the application is not compatible with the policy. The location is poorly related to local services, the scheme is not based on an assessment of local need, and it could in fact detract from the Parish Council's own ongoing efforts to secure a rural exception scheme at Staplestreet. I suggest that Members do not consider this to a true affordable housing scheme, with the sort of lasting community benefits that such a scheme ought to provide for. It is essentially a private scheme for the land-owner's benefit.

- 4.08 The site sites alongside a lane designated in the Local Plan as a rural lane, where policy DM26 seeks to safeguard against development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes. In this case

I believe that an additional dwelling here will detract from the generally undeveloped nature of the lane in question, to its detriment.

- 4.09 The site also lies adjacent to the Hernhill – Dargate conservation area. When designated in 1999 the Council’s appraisal of the area included the following assessment of its character;

*“Dargate is a small settlement of scattered properties centred around the junction of two country roads: Plumpudding Lane (and a short length of Dargate Common Road) and Butlers Hill which strikes off south west towards Hernhill.*

*The loosely-knit pattern of development is much interspersed with orchards and other farmland. Whilst a majority of the properties in the hamlet date from the second half of the nineteenth century and later, there are also some much older buildings (one group dates from the 1500s). A number of properties built in and around Dargate between 1840 and 1910 are understood to have been associated with smallholdings, perhaps attracted to the area by the productive soils.”*

The appraisal concluded as follows:

*“Dargate is a modest and unassuming place. This modest, but fragile, character accounts in large part for the charm and identity of the hamlet. Key features are (a) the scattered and open form of development, with generous spaces around the individual buildings; (b) the rural simplicity of the buildings, as exemplified by Elm Tree and Meadow Cottages; (c) the presence of agricultural land within the hamlet, especially orchards; and (d) the limited range of traditional building materials which are present and which provides continuity in building character.”*

My view is that to add new dwellings in the spaces between current loose-knit development will not be appropriate and will adversely impact on the setting of the area.

- 4.10 At paragraph 196 of the NPPF the advice is that where development will lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use. In this case I can see no any public benefit to offset the limited harm to the setting of the conservation area.
- 4.11 Finally, although the applicant mentions the self-build aspect of the proposal as being a positive factor, there is no policy support for self-build in an isolated location. The Council has opened a register for expression of interests, but this is meant to influence future policy rather than ad hoc planning decisions.

## **5.0 LOCAL REPRESENTATIONS**

- 5.01 Thirteen letters and emails of support have been received, three from beyond Canterbury and from Whitstable and Herne Bay. Their contents may be summarised as follows:

- The applicant works hard as a veterinary surgeon and spends her spare time tending her horses on the site

- The applicant has tidied and improved the land considerably, which was in a very poor condition
- The new hedge will promote biodiversity
- There is evidence of a dwelling on this site from 1836; *'the exact date of the demise of the last house is largely irrelevant.'*
- If approved, the field will never be abused again
- The applicant will make a great neighbour
- The new property will blend in with and enhance the local area
- Proposed design in keeping with the village
- A previous planning permission for a house on the land has since lapsed
- A new house would bring security and stability
- If the Council supports this application, it will *'show support for local families in the area'*
- The Council should approve this application and encourage other developments like this
- We are in favour of supporting new developments in the village for young families
- Being an eco-home, the new house would be environmentally friendly
- There would be no extra traffic

5.02 One letter neither supporting or objecting to the application notes that when the conservation area was designated in 1999 the Council concluded that *"A feature of this quiet rural settlement is the open character of development with houses interspersed with orchards, so that the presence of the Kentish countryside is always evident"* and the Council felt it desirable to seek to preserve or enhance this. No decision should now be taken that will set a precedent for further house-building in the area where there are numerous agricultural plots which would be hard to decline and which would imperil the character of Dargate.

5.03 Five letters and emails of objection have been received from local residents (two from one person). Their views may be summarised as follows:

- The development will look overpowering and out of place on a slope
- In direct line of sight from my house
- Not sympathetic to the area
- High value agricultural land – the land is within the designated Boughton and Hernhill Fruit Belt
- The site is within an Area of High Landscape Value and the house would be an eyesore sited at the highest dominant point viewed from the Thanet Way bridge, with access onto a rural lane
- This is not a windfall site or previously developed land – it was an apple orchard until 2004, followed by pears
- No existing building – it was demolished in 1969; land is therefore not Previously Developed Land. The original cottage would not have had proper foundations, so what was left could easily have been ploughed away
- The tiny cottage was demolished years ago and the planning permission for its replacement lapsed over 40 years ago
- There are many recently sub-divided plots at Dargate with road frontages which could follow this pattern of development
- The permission for a dwelling on this site in 1977 limited the occupancy of the property to an agricultural worker; and it was never implemented
- *'When the government policy refers to removing barriers to 'custom self-build' they don't mean by ignoring local development policies to protect the wider*

- countryside (ST3), gazetted areas of high Landscape Value (DM24) and safeguards against piecemeal development adjoining conservation areas.'*
- 'The character of this simple hamlet is the reason that house owners moved here. Dargate is vulnerable to piecemeal development owing to spaces around existing buildings and recent sale of a significant number of parcels of abandoned horticultural land (this being one of them). There can be little doubt that granting planning for a residential dwelling on Little Miss Acres Farm could set a precedent for further housing development, the cumulative impact of which on nature and the countryside would be seriously adverse.'*
- Proposal is not in accordance with Policies ST3, DM24 and DM33 of the Local Plan
- Poor access to local services and public transport render this a poor location in terms of sustainability
- A number of comments on the application come from people who are not neighbours
- Adjacent to a listed building which it would adversely affect
- Site is adjacent to Dargate conservation area and this proposal does not amount to positive change
- Application fails to address the impact of the proposal on the valued landscape area, contrary to Paragraph 109 of the NPPF
- This would not be an affordable home; *'this house, if built, will be at as high a value as any other houses in the area, especially since it has ten acres of land as well as the applicant's existing barn/sand school/fields, etc.'*
- Not an allocated site for housing
- This is not affordable housing; if built the property will be as valuable as any other in Dargate, with 10 acres of land attached. It is not what the Local Plan expects from affordable housing

5.04 The applicant has responded to these issues as follows (in summary):

- The new house will be but a another dot in the landscape when seen from afar
- When the new hedge develops, very little would be seen from the road
- No right to a view
- Windows to front kept small to restrict views or impact on the house opposite
- Previous house on site, and permission for a new one has now lapsed
- This is a brownfield site due to the previous house and outbuildings
- The site has been tidied and improved; the site was neglected and abused before
- Local residents have remarked on the improvement to the land since my purchase, but it is now insulting for them to suggest that this was simply to pave the way for this application
- New gateway is smart, practical and safer
- Agricultural land reinstated for producing hay and grazing livestock, although it has not been an orchard in my time of knowing it
- There is a national need for new houses but no allocations for housing in Dargate – this suggest that it is intended for individuals to have permission granted on scheme merits
- To build a house on my land would enable me to move to Dargate, as there are no properties in the market locally that are within my affordability. The future monetary value of the property is irrelevant to this application, as it would be a lifetime home for me.



- The effects on the environment are positive, as the house would be eco-friendly

## 6.0 CONSULTATIONS

6.01 Hernhill Parish Council supports the proposal, for the following reasons:

- Evidence of at least one cottage on the site some time in the past
- Planning permission granted for a dwelling some time ago
- *'The applicant informed the meeting that she intended to occupy the property herself'*
- No adverse comments from adjoining neighbours at the time of the meeting

6.02 Natural England raises no objection. The site is within 6km of the Swale SPA but although a tariff system is in place to mitigate against additional recreational disturbance the Council does not normally seek contributions on single dwelling schemes.

6.03 Kent Highways and Transportation offer no comments on the application.

## 7.0 BACKGROUND PAPERS AND PLANS

7.01 Application papers for applications 18/503385/FULL and other applications listed above.

## 8.0 APPRAISAL

8.01 The key issues to consider in this case are the principle of development on this site, residential and visual amenity, and any other material considerations. For the sake of regularity, I will take each of these in turn.

### Principle of development on this site

8.02 Firstly, it must be acknowledged that the site is situated some distance outside any established built-up area boundary in an isolated location, so rural settlement policies are applicable in this case. The site is not allocated for housing, there are no nearby housing allocations and the Council enjoys a 5.3 year supply of housing land, as required by Government. The Swale settlement strategy is set out in Policy ST3 of the Local Plan. Policy ST3 clearly states that;

*'At locations in the countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.'*

Paragraph 79 of The National Planning Policy Framework 2018 (NPPF) states that:

*'Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

- a) *there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;*
- b) *the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;*
- c) *the development would re-use redundant or disused buildings and enhance its immediate setting;*
- d) *the development would involve the subdivision of an existing residential dwelling; or*
- e) *the design is of exceptional quality, in that it:*
  - *is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
  - *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.'*

I would again contend that the proposal fails to meet these criteria. There are a number of cases very close to this site where development has been refused and dismissed at appeal in recent years due to the remote location of Dargate outside any established built-up area boundary.

- 8.03 An application for a two bedroom bungalow at a nearby property known as 'Acorns' was refused by the Planning Committee in 2014 under planning reference SW/14/0391. It should be noted that this application referred to an existing garage building which had previously been a separate dwelling, but was changed to garage use many years previously. The appeal was dismissed under reference APP/V2255/A/14/2223979, with the Inspector noting that;

*'Dargate is a small village with no facilities or services, with the exception of a public house. The local filling station, just outside the village, has an associated small convenience store. However, most facilities that are required to meet the needs of residents are at either in Whitstable or Faversham, both of which are about five miles away, or in Canterbury, which requires a journey of more than six miles. Even though there is a local bus service, it seems likely to me that the car would be the most attractive and convenient way for local people to reach their preferred destinations.'*

The Inspector further noted that;

*'I conclude that the proposed dwelling would be an unsustainable form of development, due to its location in the countryside and outside a defined village boundary. It would fail to comply with the Framework's objective of only allowing housing development in rural areas where it can be demonstrated that it would enhance the vitality of a rural community'.*

- 8.04 In a similar vein, an application for the conversion of an existing outbuilding to a dwelling at nearby Brook Farm under planning reference 15/510551/FULL was

refused for similar reasons to those under which the 'Acorns' application was refused. That decision was again appealed and dismissed, with the Inspector concluding that;

*'I find that the benefits of this proposal are outweighed by its disadvantages and that this would be an inappropriate location for a dwelling. The appeal is therefore dismissed.'*

- 8.05 An outline application for six new dwellings at nearby Chapel Plantation was appealed under non-determination planning reference 15/505467/OUT. At that Appeal (APP/V2255/W/16/3144387), the Inspector dismissed the appeal, again for similar reasons referring to the unsustainable location outside any established built-up area boundary.
- 8.06 It should be particularly noted that, in all of these cases, the Inspectors involved dismissed the appeals even at a time when the Council did not have a 5 year supply of housing land, ruling against unsustainable development where any benefits are plainly outweighed by the harm it would cause to the countryside. These decisions are a sound basis for concluding that Dargate is not an area where new residential development should be permitted due to its isolation and distance from services.
- 8.07 The history of this site is peculiar, but I am emphatically of the opinion that this application should not be treated as a proposal for a replacement dwelling; the original dwelling has not existed for nearly fifty years, and the fact that the dwelling once existed does not mean that a building should be permitted on the site now. Nor do I consider the site to represent previously developed land. I am of the opinion that the removal of the dwelling and the residential use so many years ago indicates that the former residential use of the site has long since been abandoned.
- 8.08 Similarly, I am unconvinced by the argument that, as planning permission for a new agricultural dwelling on the site was granted in 1977, it necessarily follows that such a proposal should be approved now. The previous property had been removed less than ten years before that application was approved, and both national and local policy have changed and tightened considerably since that original application. Nor does the current application come forward on the same basis.

#### Residential Amenity

- 8.09 I note the concerns raised by local residents but the applicant is correct that there is no right to a view enshrined in planning law, and I note that the distances between the existing and proposed dwellings are within acceptable parameters. I am of the opinion that one single development is unlikely to produce a significant increase in traffic movements, etc., and, as such, I believe that the proposal would have little effect on the residential amenity of existing residents.

#### Visual Amenity

- 8.10 I willingly acknowledge that the applicant has made efforts towards improving the previously untidy site by clearing up the general detritus left on the site by the previous occupier. However, whilst this has improved the site it does not mean that a new house on the site would enhance the value and appearance of the countryside.

- 8.11 I am not adverse to the design of the proposed house and I welcome its environmental credentials, although I am not of the opinion that the scheme is one that will easily blend in with the surrounding area. It will appear as a traditionally designed house but that in itself does not justify new development in the countryside.
- 8.12 The addition of a dwelling here will detract from the character of the rural lane and will affect the open setting of the conservation area, all of which add to my concern over the acceptability of the proposal.

#### Other matters

- 8.13 The applicant already owns adjoining land on which she has erected stables and a manege. This was when she understood that she would have to travel from Herne Bay to look after the animals, but as a professional vet that was a matter that she will no doubt have taken into account. There is no suggestion now that there is any need to have a house here, and the stables were not permitted on that basis.
- 8.14 The self-build and affordable benefits of this development accrue only to the applicant, and the development will not represent a long-term affordable solution to the village's housing needs. The Parish Council is currently exploring a cross-funded scheme elsewhere in the parish, in line with the Council's adopted policy approach. Even if that were not to come to fruition I do not see this proposal as any kind of substitute, nor would this location be a favoured one to serve the local need, being in such a remote location.

#### The conservation of habitats and species regulations 2017

- 8.15 The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 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.
- 8.16 Residential development within 6km of any access point to the SPA has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Modifications stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA on developments of 10 or more units, as ultimately agreed by the North Kent Environmental Planning Group and Natural England). These mitigation measures are considered to be ecologically sound.
- 8.17 However, the recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate

Assessment (AA) solely on the basis of the agreed mitigation measures (SAMMS), and needs to progress to consideration under an AA.

8.18 In this regard, there are likely to be impacts upon the SPA arising from this development and whilst the Council would expect the need for mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff only on larger schemes (at £301 per dwelling unit to be collected via a Section 106 Agreement) and not from small developments like this, this is a matter that may still need to be resolved at appeal stage.

## **9.0 CONCLUSION**

9.01 As such, I am of the opinion that the proposal would be harmful to the appearance and tranquillity of the countryside in general, and to the immediate locality in particular, being situated adjacent to the conservation area and a listed building, and in an Area of High Landscape Value. Furthermore, the site is located in a remote, unsustainable location, on land some considerable distance outside any established built-up area boundary which is also not allocated for housing.

9.02 As such, the proposal is contrary to both local and national policies for development in the countryside, and I recommend that the proposal be refused.

## **10.0 RECOMMENDATION – REFUSE for the following reasons:**

### **REASON**

(1) The proposed house and detached garage, being situated in an Area of High Landscape Value and in an isolated unsustainable location at a considerable distance outside any established built-up area boundary, would represent unsustainable and undesirable consolidation of sporadic development contrary to the approved Swale settlement strategy, harmful to the character of the local landscape, to the character of the rural lane and to the setting of the Hernhill – Dargate conservation area, and to the detrimental to the character of the countryside as a whole, contrary to policies ST1, ST3, ST7, DM11, DM14, DM24, DM26 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and Paragraphs 8, 11, 12, 79, 83 and 196 of the National Planning Policy Framework 2018.

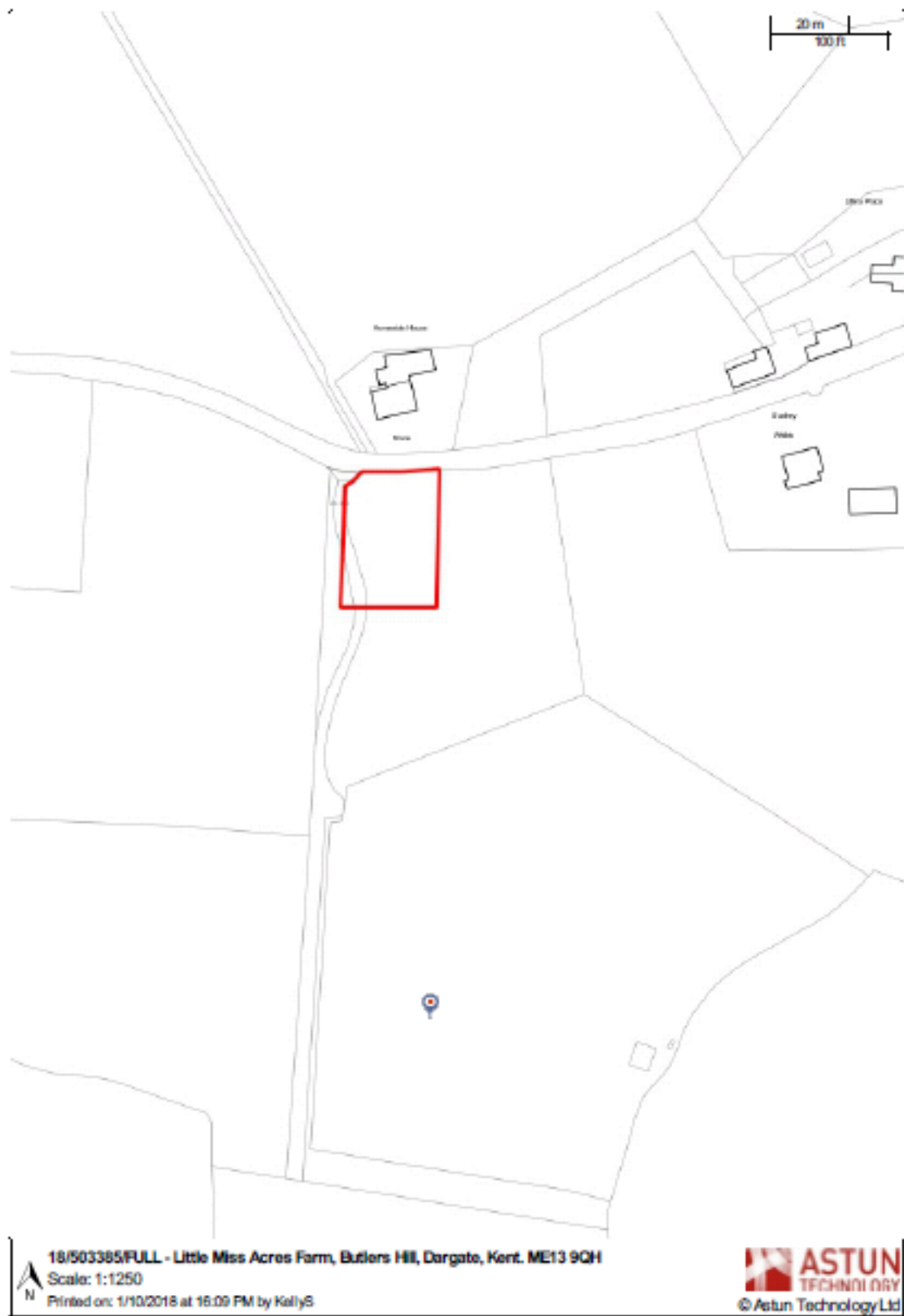
### **The Council's approach to this application:**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018, the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance the application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and there were not considered to be any solutions to resolve this conflict. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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

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



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**PLANNING COMMITTEE – 11 OCTOBER 2018**

**PART 5**

Report of the Head of Planning

**PART 5**

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

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- **Item 5.1 – Land Rear Of 31 The Leas, Minster-on-Sea**  
**APPEAL ALLOWED**  
**Delegated Refusal**

**Observations**

The Inspector concluded that this backland scheme would not cause harm either to residential amenity or to the pattern of development and character and appearance of the area.

- **Item 5.2 – Land Between 90 And 92 Barton Hill Drive, Minster-on-Sea**  
**APPEAL ALLOWED**  
**Delegated Refusal**

**Observations**

This development involves construction of a dwelling on an access track affording vehicular access to the rear of dwellings fronting Barton Hill Drive. The Inspector reached the puzzling conclusion that the development would not cause significant inconvenience (and therefore lead to an increase in on street parking as a result) because the Council had not specifically calculated how long it would take for residents using the remaining access to get to the highway.

- **Item 5.3 – 83 Chatsworth Drive, Sittingbourne**  
**SPLIT DECISION & COSTS APPELLANT’S CLAIM FOR REFUSED**  
**Enforcement and Delegated Refusal**

**Observations**

A split decision – the rear balcony was considered unacceptable. In an unusual decision contrary to the Council’s adopted design guidance, and good design generally, the Inspector has allowed the appeal insofar as it relates to a front facing, flat roof, box dormer window.

- **Item 5.4 – 11 Hustlings Drive, Eastchurch**  
**ENFORCEMENT AND PLANNING APPEALS DISMISSED**  
**Enforcement and Delegated Refusal**

**Observations**

Full support for the Council’s action.

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## Appeal Decision

Site visit made on 18 July 2018

by H Miles BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> September 2018

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**Appeal Ref: APP/V2255/W/17/3191039**

**Land to rear of 31 The Leas, Minster on Sea, Kent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Jack Brown against the decision of Swale Borough Council.
  - The application Ref 17/503867/FULL, dated 21 July 2017, was refused by notice dated 29 September 2017.
  - The development proposed is the erection of a single storey dwelling using existing access, garage and vehicular turning area.
- 

### Decision

1. The appeal is allowed. Planning permission is granted for the erection of a single storey dwelling using existing access, garage and vehicular turning area in accordance with the terms of the application Ref 17/503867/FULL, dated 21 July 2017, subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. Queries have been raised about the accuracy of some material in the appellant's appeal statement. This appeal has been assessed on the basis of all submitted information and has also been informed by a site visit. I am satisfied that I have a clear understanding of the site and surroundings on which to base my decision.
3. During the course of the consideration of this appeal the revised National Planning Policy Framework (the Framework) has been published. I have invited both main parties to submit comments on the relevance of the revised Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the revised Framework.

### Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area, and the effect on the living conditions of existing occupiers, particularly in relation to noise, disturbance and overlooking from the access.

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<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/W/17/3191039

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## Reasons

### *Character and Appearance*

5. The Leas is characterised by (mainly) residential properties on one side, with an open aspect towards the beach on the other. There are a variety of different styles of property, some with large rear gardens, generally one or two storeys in height. I observed at my site visit that there are some buildings in the rear gardens surrounding the site of varying type, scale and size.
6. An unmade section of Minster Drive is in close proximity to the site and includes dwellings sited perpendicular to the adjoining main roads (The Leas and Southsea Avenue). The properties in this area also have smaller sized rear gardens.
7. 31 The Leas is a single storey dwelling with a large rear garden. A driveway runs between number 31 and 32 which provides rear access (including to garages and parking) for some of the adjoining dwellings.
8. Given that in very close proximity to the site there are properties which, although they do front the unmade part of Minster Drive, do not front the main roads, and that there are properties which do not benefit from large rear gardens, I consider that this variety in garden size, orientation and road frontage form part of the character and appearance of the area. As such, the subdivision of the rear garden would not cause harm to the character of the area, which I find already has similar plots.
9. The proposed new dwelling would not have a road frontage to The Leas. However, I have addressed above that I consider similar development to Minster Drive to form part of the character of this area (albeit that Minster Drive is a slightly wider, but partly unmade, through road). Furthermore, I do not find that this area is characterised by development solely fronting the main roads. Therefore I do not consider the proposed dwelling's lack of frontage to the Leas to be harmful to the character and appearance of the area.
10. The single storey scale is in keeping with the height of development in the surrounding area. Due to site levels, which slope upwards away from the road, the ridge of the roof of the proposed new dwelling would be higher than the host property. However, given the land continues to fall away to the road and the beach beyond it is likely that the proposed ridge height would be screened by the host property in any public views.
11. Taking all this into consideration, I conclude that the proposed development would not cause harm to the character and appearance of the area, and would in this respect be in accordance with Policy DM14 of the Swale Borough Local Plan – Bearing Fruits 2031 (the Local Plan) which in part requires development to reflect the positive characteristics of the site and locality, and to be appropriately sited and designed.

### *Living Conditions*

12. The driveway is currently used to provide access to parking spaces and garages. Therefore there is an existing situation with noise and disturbance, and passing overlooking to the rear of the adjoining properties, from those using the driveway.

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Appeal Decision APP/V2255/W/17/3191039

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13. As a result of this proposal, 31 The Leas would no longer have access to car parking at the rear of their property. Therefore the number of households using this access route would not change.
14. Concerns are raised that movements along the driveway would increase due to the change from the access serving an ancillary garage/parking space to a dwelling. However I am not presented with evidence to confirm the existing nor expected number of movements. Given the access would continue to serve the same number of properties and parking spaces, I am not lead to conclude that the number of movements would notably increase.
15. Therefore I find that the change in comings and goings, is unlikely to result in a significant increase in overlooking, noise or disturbance over and above the existing situation. Consequently I conclude that the proposed use of the driveway would not cause harm to the living conditions of existing occupiers. As such, in this respect, I find the proposals to be in accordance with Policy DM14 of the Local Plan which, in part, states that development should cause no significant harm to amenity.

#### **Other Matters**

16. Comments have been made regarding what could be built under permitted development at this site. I have not been presented with an application or decision for a certificate of lawfulness. Therefore I do not consider there to be a reasonable prospect of such an alternative development coming forward. As such I afford this fallback position limited weight.
17. With regard to the issue of precedent, the appeal has been considered on the evidence before me and on its own merits, and future applications and appeals would be considered on this basis.
18. The effect on living conditions of existing occupiers has been drawn to my attention. This matter is largely identified and considered within the Council officer's report. Concerns have also been raised regarding access for emergency services vehicles. The Council did not raise concerns with this in their officer's report, nor am I presented with any objection on this ground from transport or highways officers. The Council did not feel that these were reasons to refuse the application. I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters.
19. I have had regard to comments relating to access to the site during construction, and a condition is proposed to ensure impacts during construction are considered in relation to the living conditions of neighbouring occupiers and highway safety.

#### **Conditions and Conclusion**

20. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents.
21. Conditions setting a time limit for commencement of development and for it to be carried out in accordance with the approved plans are necessary to provide certainty. A condition relating to materials is necessary to ensure that the

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Appeal Decision APP/V2255/W/17/3191039

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effect of development on the character and appearance of the area is acceptable. A condition relating to implementation and use of the car parking is required to ensure adequate provision of car parking is provided. A condition requiring specific details in relation to management during the construction phase is necessary in the interests of highway safety and living conditions, and these details are required prior to commencement to ensure these measures are implemented from the outset. I have attached a condition in relation to working hours to protect living conditions of existing occupiers.

22. The Council has requested a condition relating to landscaping. However, as the relevant land at this site consists of private gardens and as the area is not significant in landscape terms, I do not consider that this would meet the test of necessity. I have also omitted the suggested condition in relation to sustainable construction techniques as I am not provided with evidence to demonstrate that such measures would meet the test of necessity in this case.

23. For the above reasons, and subject to the conditions listed, I conclude that the appeal should be allowed.

*H Miles*

INSPECTOR



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## Appeal Decision

Site visit made on 18 July 2018

by H Miles BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> September 2018

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**Appeal Ref: APP/V2255/W/18/3196311**

**Land between 90 and 92 Barton Hill Drive, Minster-on-Sea ME12 3NF**

- 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 Hussain against the decision of Swale Borough Council.
  - The application Ref 17/506148/FULL, dated 27 November 2017, was refused by notice dated 23 January 2018.
  - The development proposed is a 1 bedroom house.
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### Decision

1. The appeal is allowed. Planning permission is granted for a 1 bedroom house in accordance with the terms of the application Ref 17/506148/FULL, dated 27 November 2017, subject to the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. During the course of the consideration of this appeal the revised National Planning Policy Framework (the revised Framework) has been published. I have invited both main parties to submit comments on the relevance of the revised Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the revised Framework.

### Main Issue

3. Although the application was refused for two reasons, I consider the main issue in this appeal is whether the changes to the rear access road would cause unacceptable harm to the living conditions of neighbouring residents.

### Reasons

#### *Living Conditions*

4. The proposed development would lead to the closure of one end of an unmade rear access road which serves the rear of properties on Barton Hill Drive and Nautilus Drive. Some of these properties have gates, garages and/or parking spaces which are served by this access road.
5. The Highway Authority do not object to the proposal and have commented that the alternative access from Dreadnaught Avenue would be suitable for most vehicles and from my observations I do not disagree with this. I note that in parts the access road is narrow and there are limited places to pass, however due to low vehicular volumes and speeds this would not prevent its use. Also,

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in contrast to the 90 degree bend through the appeal site, there is excellent forward visibility as one travels towards Dreadnought Avenue. Consequently, the closure of the southern access onto Barton Hill Drive would reduce the likelihood of vehicles meeting at the bend and having to undertake lengthy reversing manoeuvres. Therefore I find that the access from Dreadnought Avenue would provide a usable, safe and convenient vehicle access point to the rear of these properties.

6. Both ends of the access road are similar in nature in that they are unmade. Therefore the appeal and convenience of the alternative entrance/exit lies mainly in whether its distance would be so far as to deter residents from using it. The Council has not quantified how many existing dwellings benefit from rear access nor are there any calculations as to how much longer it would take residents to enter/exit via Dreadnought Ave. Without such information I am unclear how the Council came to their view on the issue of neighbour amenity. I note that direct access to the rear of properties is achievable from the existing garages and car parking spaces (so once parked, occupiers would not have to walk back to the main road to enter their property). I do not consider this would be a significant inconvenience. It therefore follows that the development would be unlikely to result in additional on-street parking in the locality.
7. I note concerns have been raised as to the legal right of access via Dreadnought Avenue, however this arrangement appears to have existed for many years and I have not been presented with evidence to demonstrate that it is likely to be withdrawn. This argument therefore attracts very limited weight. The Council also question whether the applicant benefits from any formal access rights to use the rear access road. Notwithstanding that the Council has not presented any evidence to suggest otherwise, I concur with the appellant that it seems reasonable to assume that future occupiers of the dwelling would enjoy the same rights as other properties than back onto the road. Even if I am wrong about that, these would be private legal matters and not a material planning considerations to which I can attribute any degree of weight.
8. A single parking space is proposed to the rear of the proposed new dwelling which would be accessed from the rear vehicle access road. Concern has been expressed about the convenience, usability and access rights to this space, and in these respects my conclusions are the same as those explained above for other residents using this access road. As such I find that this space would not be so inconvenient as to prevent its use.
9. For these reasons I conclude that the development would not cause significant harm to the living conditions of the existing occupiers and that, in this respect, the proposal would be in line with Policies DM7 and DM14 of the Swale Borough Local Plan – Bearing Fruits 2031 which include the aim that development proposals will not cause significant harm to amenity and should provide adequate on-site parking.

#### **Other Matters**

10. Issues including right of access to the appeal site, character and appearance (including in terms of the impact on value of property), effect on living conditions of existing occupiers, the loss of a family house and the combined impact with the neighbouring property have been drawn to my attention. These

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matters are largely identified and considered within the Council officer's report and the Council did not feel that these were reasons to refuse the application. I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters.

#### **Conditions and Conclusion**

11. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the revised Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents.
12. Conditions setting a time limit for commencement of development and for it to be carried out in accordance with the approved plans are necessary to provide certainty. A condition relating to sustainable energy and water conservation measures is required to promote energy and water efficiency. A condition relating to materials is necessary to ensure that the effect of development on the character and appearance of the area is acceptable. A condition in relation to foul and surface water disposal is necessary to prevent pollution of water supplies.
13. In view of the scale of development, its location and likely construction period, I am not persuaded that a Construction Transport Management Plan or relating construction conditions are required and have omitted the suggested conditions accordingly. I have however attached a condition in relation to working hours to protect living conditions of existing occupiers.
14. The Council has requested a condition relating to landscaping. However, as the relevant land at this site consists of private gardens and as the area is not significant in landscape terms, I do not consider that this would meet the test of necessity. I have also omitted the suggested condition in relation to sustainable construction techniques as I am not provided with evidence to demonstrate that such measures would meet the test of necessity in this case.
15. The Council has recommended a condition restricting permitted development rights for the proposed new dwelling. However, Planning Practice Guidance notes that these conditions should only be used in exceptional circumstances. I do not consider that the circumstances of this case (a single new dwelling in a residential area) amount to exceptional circumstances, nor have I been presented with evidence to justify this. Therefore I do not consider that this condition meets the test of necessity and so it is not included below.
16. For the above reasons, and having regard to all other matters, raised I conclude that the appeal should be allowed.

*H Miles*

INSPECTOR

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**Schedule of Conditions**

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: 1333 01B.
- 3) No development beyond the construction of foundations shall take place until details in the form of samples of external finishing materials to be used in the construction of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.
- 4) None of the dwellings hereby permitted shall be occupied until works for the disposal of foul and surface water shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 5) Demolition or construction works shall take place only between 0730 – 1900 hours on Monday to Friday and 0730 – 1300 hours on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.




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## Appeal Decisions

Hearing Held on 5 June 2018

Site visit made on the same day

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2018

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### Appeal A: APP/V2255/C/17/3178690

#### Land at 83 Chatsworth Drive, Sittingbourne, Kent ME10 1TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Martin Ward against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 18 May 2017.
- The breach of planning control as alleged in the notice is 'Without planning permission the construction of a dormer window to the front of the dwellinghouse and the erection of a first floor balcony at the rear of the dwellinghouse on the land'.
- The requirements of the notice are:
  - (i) Demolish the dormer to the front of the dwelling house.
  - (ii) Demolish the balcony at the rear of the dwelling house.
  - (iii) Remove from the Land all materials, rubble, machinery, apparatus and installations used in connection with or resulting from compliance with this Enforcement Notice.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Decision.**

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### Appeal B: APP/V2255/C/17/3191871

#### 83 Chatsworth Drive, Sittingbourne, Kent ME10 1TW

- 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 Martin Ward against the decision of Swale Borough Council.
- The application Ref: 17/505172/FULL, dated 25 September 2017, was refused by notice dated 1 December 2017.
- The development proposed is to regularise the insertion of a dormer window, construction of a balcony and associated spiral staircase as a means of escape.

**Summary of Decision: The appeal is allowed in part and is dismissed in part, as set out below in the Formal Decision.**

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#### Application for costs

1. A written application for costs was made by Mr Martin Ward against Swale Borough Council in relation to Appeal A. The Council made oral submissions in relation to that application at the Hearing and Mr Ward's agent responded. This application is the subject of a separate Decision.

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### **Preliminary Matters**

2. In Appeal B the stated description of development is to regularise the insertion of a dormer window, construction of a balcony and associated spiral staircase as a means of escape. This is taken from the application form. The Council determined the application on the basis that it was a retrospective application and redefined it as such in the decision notice. I will determine Appeal B on the basis that it is seeking retrospective planning permission for the insertion of a dormer window, construction of a balcony and associated spiral staircase as a means of escape.

### **Appeal A on ground (c)**

3. In appealing on ground (c), the burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the enforcement notice do not amount to a breach of planning control. The ground (c) appeal relates only to the front dormer window part of the allegation.

4. The appeal property was constructed pursuant to planning permission SW/03/0269. Condition 3 of that planning permission stated:

*Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking and re-enacting that Order) (with or without modification), no windows/dormer windows (other than those expressly authorised by this permission) shall be constructed.*

5. The appellant states that the 2003 condition only prohibited a dormer window, not an enlargement to the roof per se. The condition did not remove the right to enlarge the roof. A dormer window is a window that projects vertically from a sloping roof, which is what has been inserted in the front roof slope of No 83. As such, the dormer window which has been inserted requires planning permission.
6. No planning permission has been granted for the insertion of the dormer window and as such the appeal on ground (c) fails.

### **Appeal B – section 78**

#### Main Issues

7. The main issues are:
  - the effect of the front dormer window on the character and appearance of the host dwelling and street scene; and
  - the effect of the balcony on the living conditions of the occupiers of nearby properties, particularly in relation to privacy.

#### Reasons

##### *Character and Appearance*

8. The appeal site lies within a residential area, which has a variety of dwelling types and styles. There are pairs of semi-detached houses, detached houses, terraces, bungalows and chalet bungalows. No 83 is one of a pair of semi-detached dwellings which were granted planning permission in 2003. To the west are two chalet bungalows: one with three dormer windows and the other with one dormer window to the front roof slope.

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9. There are examples of dormers having been inserted in to a variety of the dwelling types within the immediate area. While these are not the dominant character of the area they are clearly part of the established character of it.
10. The appeal property is set, along with No 81, at an angle to the road at the southern end of Chatsworth Drive. Due to mature tree planting in front of dwellings to the north of the appeal site views towards Nos 81 and 83 are restricted as you approach from that direction. To the east an access road leads to a row of garages to the rear of properties in Chatsworth Drive and individual garages to dwellings in London Road, so that the Nos 81 and 83 are seen separately do the more historic development of Chatsworth Drive at the end of the residential cul-de-sac.
11. There is a pedestrian walkway to the flank boundary of No 81 which allows pedestrian access to London Road, the land slopes from the north up to the south at this point. To the south of No 83 is 236 and 234 London Road. No 236 is a bungalow with a glazed conservatory type structure across the rear elevation.
12. The Council has produced a document entitled *Designing an Extension A guide for Householders* (DaE) which outlines important points to consider when proposing an extension. In relation to dormers it states that they should be in proportion with the roof and as a guide should be no deeper than half the depth of the roof slope with square proportions or vertical emphasis. Tiled roofs are favoured with tiles to match the main roof.
13. The dormer window sits roughly central within the roof slope, set down from the ridge and in from the edge of the gable and party wall, and away from the eaves. It is a subservient addition to the roof. Complementary materials to the host dwelling have been used for the formation of the dormer window. As such, I consider it complies with the thrust of the guidance in the DaE.
14. Due to the variety of building forms and design, the use of appropriate materials and its subservient form within the roof scape the front dormer complies with Policies CP4, DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) which require development to be of an appropriate design and quality and which is appropriate to the context with respect to materials, scale height and massing within the roof scape.
15. I consider that there are no conditions which would be necessary on any grant of planning permission for the existing front dormer as the development is complete.

#### *Privacy*

16. No 83 is set at a lower level than 236 London Road and there are clear views from the balcony to the rear garden and rear glazed conservatory of No 236. The rear balcony at No 83 is a minimum of 16.7m from the rear elevation of No 236. The first floor window of No 83, as it was originally built, was 18.3m distant. The separation distances to other properties in London Road are greater than 21m. The DaE states that windows to the rear should be at least 21m from the windows of other houses to the rear and that extensions which reduce such a distance would need to be carefully examined. There is no guidance relating specifically to balconies.

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17. The original dwelling at No 83 did not comply with the separation distances set out in the DaE for window to window distances to No 236. However, I consider that the balcony further reduces the separation and introduces an area where people can come and go at first floor level to No 83 or sit or stand out on. This in my view would increase the potential and frequency of overlooking from No 83 to No 236 which would be seriously detrimental to the living conditions of the occupiers of No 236. This would be contrary to LP Policies CP 4, DM 14 and DM 16 which require development to be of a good design, protecting residential amenity and causing no significant harm to amenity.
18. The relationship of the balcony to the rear first floor window of No 81 would allow a person standing on the balcony or climbing the stairs to look into that window. However, I am satisfied that this could be adequately mitigated by the imposition of a condition to require the erection and retention of a privacy screen, were the balcony found to be acceptable in other regards.

#### Other Matters

19. The appellant stated that the balcony and staircase were required to provide a safe fire escape for occupiers. As I understand it, this requirement is because the property is open plan and over three floors. There is no substantiated evidence to demonstrate that internal alterations could not be made to create a safe layout or that if the layout remained the same that there was no alternative to the external fire escape via the balcony and stair case.

#### Conclusions

20. While I have found the front dormer window to be acceptable for the reasons set out above, the rear balcony and staircase significantly harms the privacy of the occupiers of 236 London Road. The stated justification for the balcony and staircase does not, on the evidence available, outweigh that harm. I will therefore allow the front dormer window and dismiss the rear balcony and staircase.

#### **Appeal A on ground (f)**

21. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellants must specify specific lesser steps which, in their view, would overcome the objections to the appeal development. The appellant has confirmed that ground (f) is only pleaded in relation to the dormer window and not any other part of the allegation. The appellant considers that the glazed part of the dormer window could be blocked up leaving a roof enlargement.
22. The Council confirmed at the Hearing that the purpose of the notice is to remedy the breach of planning control that has occurred. As there is no ground (a) appeal in relation to Appeal A and I have found what has been constructed required planning permission the lesser steps cannot remedy the breach of planning control. As such, the appeal on ground (f) fails.
23. However, I have concluded that the dormer window is acceptable for the reasons set out in the considerations of Appeal B. A split decision will be issued in relation to Appeal B under section 78 of the Act and planning permission will be granted for the front dormer. The appellant can therefore place reliance on section 180 of the Act, to the effect that the notice ceases to

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have effect so far as it is inconsistent with the planning permission that will be granted.

**Appeal A on ground (g)**

24. This ground of appeal is that the time given to comply with the notice is too short. The Council have given three months for compliance. The appellant sought a six month compliance period.
25. At the Hearing the Council accepted that a six month period would allow a reasonable length of time for contractors to be appointed and a solution to the fire escape issue to be explored and an alternative solution pursued. I will therefore vary the period for compliance to six months. The appeal on ground (g) succeeds to that extent.

**Conclusion on Appeal A**

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations

**Formal Decisions**

Appeal A

27. It is directed that the enforcement notice be varied by the deletion of words 'Within 3 (Three)' and the substitution thereto of 'six'. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

28. The appeal is dismissed insofar as it relates to the construction of a balcony and associated spiral staircase as a means of escape. The appeal is allowed insofar as it relates to the insertion of a dormer window and planning permission is granted for the insertion of a dormer window at 83 Chatsworth Drive, Sittingbourne, Kent ME10 1TW in accordance with the terms of the application, Ref: 17/505172/FULL, dated 25 September 2017 and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

*Hilda Higenbottam*

Inspector

Appeal Decisions APP/V2255/C/17/3178690 & APP/V2255/C/17/3191871

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**APPEARANCES**

FOR THE APPELLANT:

Miss J Norris BSc FRICS	The Rural Planning Practice, agent for the appellant
Mr M Ward	Appellant
Mr D Ward	Father of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs T Day BA (Hons) MRTPI	Senior Planning Officer, Swale Borough Council
Ms M Harris BA(Hons)	Graduate Planner, Swale Borough Council

DOCUMENT SUBMITTED AT THE HEARING

1 Statement of Common Ground submitted by the appellant





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## Costs Decision

Hearing Held on 5 June 2018

Site visit made on the same day

by **Mrs H M Higenbottam BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 September 2018**

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### **Costs application in relation to Appeal Ref: APP/V2255/C/17/3178690 Land at Chatsworth Drive, Sittingbourne, Kent ME10 1TW**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Martin Ward for a partial award of costs against Swale Borough Council.
  - The hearing was in connection with an appeal against an enforcement notice alleging, without planning permission, the construction of a dormer window to the front of the dwellinghouse and the erection of a first floor balcony at the rear of the dwellinghouse on the land.
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### **Decision**

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

### **The submissions for Mr Martin Ward**

2. The costs application was submitted in writing. The following additional points were made orally. The application for costs is made with respect to the lack of a site visit to assess the impact of overlooking on No 236 London Road.
3. The Enforcement Officer for the Council spoke to neighbours but did not speak to the applicant. The original house did not fit into the design guidance produced by the Council and was short on the back to back distances.
4. The Council Officer should have attended the applicant's site and property to assess the situation and he then would have concluded that there was no harm resulting from the development.

### **The response by Swale Borough Council**

5. The Council provided a written response to the costs application. The following additional points were made orally.
6. The Council carried out a site visit from a neighbouring property once it was aware of the rear balcony. The appeal property has also been viewed from public areas, a footpath and the road.

### **Reasons**

7. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved

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Costs Decision APP/V2255/C/17/3178690

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unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The applicant's submissions fall within paragraph reference ID 16-046-20140306 of the PPG, namely that the Council did not carry out adequate prior investigations. More diligent investigations could have avoided the need to issue the notice, narrowed the issues or avoided the appeal.

8. The Council has provided evidence that they carried out site visits on 16 and 25 March 2015. A further site visit was carried out when the Council became aware of the erection of the rear balcony on 15 February 2017. The Council state that they were unable to access the appeal property at that time, which I take to mean no one was at the appeal property when the Council visited that day. The Officer viewed the balcony and took photographs from a neighbouring property.
9. In my view, the Council carried out a thorough investigation to assess the development that had taken place at the appeal property and the effect of that on the living conditions of the neighbouring occupiers. I see nothing unreasonable in how the Council gathered its evidence or the fact that the Council did not view the balcony from within No 83's boundary. This is because the Officer was able to assess the effect of the erection of the balcony from public areas and from the neighbouring property.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs fails.

*Hilda Higenbottam*

Inspector




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## Appeal Decisions

Site visit made on 19 June 2018

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

**Decision date: 24 September 2018**

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**Appeal A: APP/V2255/C/17/3182682**

**Appeal B: APP/V2255/C/17/3182683**

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

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Michael Crossman and Appeal B is made by Mrs Jenifer Crossman against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 11 August 2017.
- The breach of planning control as alleged in the notice is 'Without planning permission, the construction of fencing, the approximate position of which is highlighted on the plan, which in the opinion of the Council would require planning permission.
- The requirements of the notice are:
  - (i) Remove the fencing
  - (ii) Remove any materials or debris etc from the Land caused in complying with the requirements of 5 (i) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (e) of the Town and Country Planning Act 1990 as amended.

**Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.**

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**Appeal C: APP/V2255/W/17/3180228**

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Michael Crossman against the decision of Swale Borough Council.
- The application Ref: 17/501661/FULL, dated 23 March 2017, was refused by notice dated 30 June 2017.
- The development proposed is fence 1.650 high between No 11 and 13 Hustlings Drive on the property (land) belonging to No 11 Hustlings Drive. The fence is 1.650 high on No 13 side and 1.500 on No 11 side and 5.400 long in front of building house line and 5.600 from edge of road (highway).

**Summary of Decision: The appeal is dismissed.**

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### The Notice

1. The appellant alleges that the Notice is flawed due to the lack of clarity of the plan which accompanies it. The plan has a section of yellow highlighting to indicate the approximate location of the fence attacked by the Notice. This yellow highlighting is in the same approximate location as that identified by the

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appellant of Appeal A in the planning application for the retention of the fence the subject of Appeal C. As such, I consider that the plan shows adequately the approximate location of the fence the subject of the Notice.

#### **Appeals A and B on ground (e)**

2. The ground of appeal is that the enforcement notice was not correctly served as required by section 172 of the Act. Section 172 requires a copy of the Notice to be served on the owner and on the occupier of the land to which it relates and to any other person having an interest in the land.
3. There is no substantiated evidence that the Notice was not served correctly. Both Mr and Mrs Crossman have submitted appeals against the Notice. There is no evidence of any other party that the appellants consider should have been served with the Notice but was not. Therefore on the evidence before me the appeals on ground (e) fail.

#### **Appeals A and B on ground (c)**

4. This ground of appeal is that the matters alleged in the Notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal the onus of proof is on the appellants to show that there has not been a breach of planning control. In this case the appellants make two submissions. Firstly, the appellants state that the fence as erected does not constitute development under section 55 of the Act. Secondly, they state that Condition 5 of planning permission SW/06/0900 does not prevent the erection of the fence the subject of the Notice and thus it would be permitted development (PD) in accordance with Part 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
5. The Notice alleges that the fence is operational development which is the first limb of the definition of development under section 55 of the Act. Operational development is the carrying out of building, engineering or other operations in on over or under land. A building is defined by section 336 of the Act as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
6. In *Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Co Ltd* [1949] 1QB 385 three primary factors were identified as decisive of what was a building (a) that it was a size to be constructed on site, as opposed to being brought onto the site (b) permanence (c) physical attachment. No one factor is decisive. The fence that has been erected consists of posts and panels. There is no substantiated evidence to demonstrate that the posts and panels were not brought onto the land and then erected, it is not a permanent structure or that it is not physically attached to the ground. On the basis of the evidence before, me I consider that the fence is a building and thus is operational development.
7. No 11 is part of a development that was granted planning permission under SW/06/0900. Condition No 5 of that planning permission states:  
 'Notwithstanding the provisions of Article 3 and Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, no fence, wall, gate or other means of enclosure may be erected nearer to any part of the highway which bounds the curtilage than any part of the house or in advance

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of the front wall line of any house (excluding any garage element or detached garage) hereby approved.'

8. The appellant considers that the condition prevents only the erection of fencing which is adjacent to any part of the highway AND bounds a curtilage and that the second part of the condition, 'in advance of the front wall of the house', can only mean the erection of fencing before the front wall of the house was erected.
9. The Council has imposed the condition to take away permitted development rights for fencing within the front garden area of the dwellings granted planning permission under reference SW/06/0900. The term 'in advance' is defined in the Oxford Compact English Dictionary as 'ahead in place or time'. 'Ahead' is defined, in the same publication, as 'further forward in space or time'. With those definitions in mind, I find that the condition reads clearly to prevent the erection of any fence, wall, gate or other means of enclosure forward of the front wall of any house i.e. the front garden area in front of the nearest elevation of any dwelling facing towards the road. I further find that the condition is clear and unambiguous on a plain reading of the condition as a whole.
10. I therefore find that planning permission was required for the fence the subject of the Notice and that no planning permission had been granted. The appeal on ground (c) fails.

#### **Conclusions on Appeals A and C**

11. For the reasons given above I conclude that Appeals A and B should not succeed. I shall therefore uphold the enforcement notice.

#### **Appeal B**

##### **Main Issues**

12. The main issue is the effect of the development on the character and appearance of the street scene and the residential area.

##### **Reasons**

13. The appeal site is part of a residential estate that has an estate road with cul-de-sacs leading from that. The front garden areas are predominantly open without fencing as a result of the Condition 5 of the original planning permission. While a number of properties have means of enclosure in their front gardens these are exceptions to the predominant open form within front gardens within the estate. Moreover, it is not clear whether those referred to have received planning permission or are immune from enforcement action.
14. Planning permission was granted, at appeal in 2016 for small retaining walls for brick planters to front garden – two areas at the appeal property. The Inspector in that case found that although at the front of the property they were relatively low features which he found not to be intrusive in the street scene. He went on to comment that the vegetation in the planters provides verdure which softens the impact of the masonry. The fencing the subject of the current appeal is different in height, location and materials to the low level planters and walls the subject of the previous appeal.

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15. The height and form of the appeal fence is such that it is clearly read as a barrier between two plots, Nos 11 and 13. The fence removes the openness of the front garden areas of both properties. I appreciate that due to the location of No 11, set back near the end of the cul-de-sac, there are limited views from the estate road and for part of the way down the cul-de-sac of the fence. However, the reduction in the openness of the front garden areas of Nos 11 and 13 does significantly change the character of the estate as it was planned as an open plan front garden form. Incremental change such as the fence the subject of this appeal, results in an erosion of the openness of the individual plot and the estate as a whole. Thus, in my view, the fence significantly harms the character and appearance of the street scene and the residential area as a whole.
16. The development is therefore contrary to Policies CP4, DM14 and DM16 of the Swale Borough Local Plan Bearing Fruits 2031 (adopted July 2017) which require development to be of a good design, well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location and maintain or enhance the character of the street scene.
17. For the reasons given above I conclude that Appeal B should be dismissed.

#### **Formal Decisions**

Appeals A and B

18. The appeals are dismissed and the enforcement notice is upheld.

Appeal C

19. The appeal is dismissed.

*Hilda Higenbottam*

Inspector