



## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 4 April 2019

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

#### RECORDING NOTICE

Please note: this meeting may be recorded.

At the start of the meeting the Chairman will confirm if all or part of the meeting is being audio recorded. The whole of the meeting will be recorded, except where there are confidential or exempt items.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during this recording will be retained in accordance with the Council's data retention policy.

Therefore by entering the Chamber and speaking at Committee you are consenting to being recorded and to the possible use of those sound records for training purposes.

If you have any queries regarding this please contact Democratic Services.

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1. Emergency Evacuation Procedure

Pages

The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. 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

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

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

It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the Minutes of the Extraordinary Meeting held on 28 February 2019 (Minute Nos. 525 - 528), and the Meeting held on 7 March 2019 (Minute Nos. 542 - 547) 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. Planning Working Group

To approve the Minutes of the Meeting held on 25 March 2019 (Minute Nos. to follow).

To consider the following applications:

2.5 18/505929/FULL Land rear of 54-76 Oak Road, Sittingbourne, ME10 3PF  
2.3 19/500219/FULL 20 Hustlings Drive, Eastchurch, Sheerness, ME12 4JX

6. Deferred Item

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To consider the following application:

18/503723/MOD106, 153 London Road, Sittingbourne.

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 this item 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 3 April 2019.

7. Report of the Head of Planning Services

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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 3 April 2019.

### **Issued on Tuesday, 26 March 2019**

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

**PLANNING COMMITTEE – 4 APRIL 2019**

**DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>Def Item No. 1      REFERENCE NO - 18/503723/MOD106</b>			
<b>APPLICATION PROPOSAL</b> Modification of Planning Obligation dated 18/05/2010 under reference SW/08/1124 to allow removal of on site affordable housing.			
<b>ADDRESS</b> 153 London Road Sittingbourne Kent ME10 1PA			
<b>RECOMMENDATION</b> Grant Modification			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal would provide a mechanism whereby the provision of on site affordable housing, at a level which complied with policy DM8 of the Local Plan could be rigorously tested and delivered if a Registered Provider (RP) is willing and able to take this on. However, if there are no RPs willing and able to provide on site affordable housing then the mechanism provides a fallback option whereby the Council would receive a commuted sum, this would be put towards providing affordable housing elsewhere in the Borough. The commuted sum has been set at a level which, when considered in the context of the viability evidence, is believed to be compliant with Policy DM8 of the adopted Local Plan.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Initially called in by Cllr Mike Baldock, but subsequently called-in by Head of Planning Services at Committee meeting on 7 March 2019.			
<b>WARD</b> Borden And Grove Park	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Clarity Properties Ltd <b>AGENT</b> Brachers LLP	
<b>DECISION DUE DATE</b> 07/09/18	<b>PUBLICITY EXPIRY DATE</b> N/A		
<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>
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approved	08.12.16
16/508336/NMAM D	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approved	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings	Approved	08.08.13

	and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.		
SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access.	Approved	18.05.10

**MAIN REPORT**

**1.0 INTRODUCTION**

1.01 Members will recall that this application was reported to Planning Committee on 7<sup>th</sup> March 2019. The report to that meeting is appended (along with the appendices which were attached to this previous committee report) and provides the details of the application site, the proposal which was considered at that time and relevant policies. The application was deferred following the Head of Planning Services calling in the application *“as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance.”*

**2.0 PROPOSAL**

2.01 For clarity the proposal as considered at the 7<sup>th</sup> March 2019 planning committee sought to modify the Section 106 Agreement so that prior to the occupation of the 21<sup>st</sup> unit, a commuted sum of £40,000 is paid in one instalment for off site affordable housing. Since the deferral of the application, Officer’s have been contacted by the agent in relation to the possibility of amending the proposal. In light of this a meeting has taken place between Officer’s and the applicant and agent. As a result of this meeting, a revised proposal has been submitted. In summary, this would seek to modify the Section 106 Agreement to provide for 3 affordable units on site. However, there will, due to potential delivery issues, which will be discussed in more detail below, be a fall-back option if these units are unable to be provided as on-site provision. The agent has submitted the following to describe the proposed modification:

- (i) *“The s106 agreement would be varied to provide for 3x units of affordable housing on site – the current affordable housing requirements in the Council’s adopted policy require 10% on site provision equating to 2.6 units which has been rounded up to 3;*
- (ii) *The Developer will not be permitted to occupy more than 22 Open market units until such time as the AHUs have been transferred to a Registered Provider;*
- (iii) *During a three month period from completion of the deed of variation the Developer will offer the 3x units to the Registered Providers identified in our meeting; i.e. Sage and Landspeed and any others which our client and your Housing Department may identify. The developer will provide evidence of the offers to the Council’s Planning and Housing Managers;*
- (iv) *If at the end of that three month period the developer can demonstrate to the Council’s Planning and Housing Managers that no Registered Provider is*

- willing to take the units then the affordable housing provisions in the s.106 will default to a financial contribution of £40,000;*
- (v) *The default contribution will not be conditional upon a further viability appraisal and will be payable before the occupation of more than 22 Open Market units.”*

### **3.0 APPRAISAL**

- 3.01 As Members will be aware, the current Section 106 Agreement requires 30% of the units to be provided on site as affordable prior to the occupation of 50% of the market units. However, this agreement was signed when the policies of the 2008 Local Plan were applicable. Since this time, and as set out in the viability reports and detailed in the appended report presented to the 7<sup>th</sup> March 2019 Planning Committee, the profit of the development has been demonstrated as being 0.65%. This is significantly below a ‘normal’ gross development profit of around 20% which would be considered as ‘normal’ and is typically accepted as such by Planning Inspectors.
- 3.02 Policy DM8 of the adopted Local Plan sets out that due to viability testing that was carried out, developments in Sittingbourne will be required to provide 10% of the total as affordable units. As a result of the considerations in this application I am of the view that due to the specific viability evidence that has been submitted in support of this proposal that a reduction from 30% to 10% is now wholly compliant with policy.
- 3.03 The above proposal, as Members will note, therefore now seeks to provide 3 on site affordable units. However, it is also important to note that the proposal seeks to insert a mechanism whereby if RP’s are not able to provide these units, then a commuted sum, set at £40,000 is provided so that affordable housing can be delivered elsewhere in the Borough. The reason for this fall-back option is due to, as set out previously, the potential difficulties with securing on site affordable units. In reaching this view, I have liaised closely with the Council’s Strategic Housing and Health Manager. From her discussions with larger RP’s it has become evident that they are becoming increasingly resistant to delivering a small number of units on site. There is also the added complexity of RP’s often being unwilling to provide affordable units in mixed blocks of accommodation, creating a further barrier to these units being delivered.
- 3.04 Despite the above, through my discussions with the Council’s Strategic Housing and Health Manager, I have been made aware that there are a limited number of RP’s who would potentially be able to provide these units. As such, the Council’s Strategic Housing and Health Manager has made initial contact with these providers. This has generated some interest. The Council’s Strategic Housing and Health Manager and myself are currently in the process of liaising with the RP’s and the applicants. There is potential that these discussions will have progressed between the time of writing this report and the meeting and if so I will update Members at the meeting. As a result of the above, I am of the view that the proposed modification now allow for the best opportunity to secure on-site affordable provision, at a level which is complaint with the adopted Local Plan. I am also currently in discussions with the applicant / agent regarding the tenure split and unit size of the affordable units. These matters have not at this point been concluded and I will update Members at the meeting of the latest position.
- 3.05 However, if, after rigorous testing, there are no RPs who are able to deliver these affordable units on site, then there would still be the requirement to pay the commuted sum of £40,000. As discussed in further detail in the report presented to the 7<sup>th</sup> March 2019 planning committee (attached here as Appendix 1, I am of the firm view that a commuted sum of £40,000 would in this scenario, due to the viability constraints, be policy compliant. I do recognise that Members were minded to refuse the application

which solely proposed this commuted sum. However, I believe that if a RP is not able to deliver the units on site, this would provide a fall back option, which would enable the delivery of affordable housing units elsewhere in the Borough.

- 3.06 Turning to the commuted sum and the weight to be given to the viability report, I believe it fundamentally important to draw Members' attention to an appeal that was recently allowed at Doubleday Lodge, Glebe Lane, Sittingbourne (PINS ref 3207752 – included on this agenda as Item 5.1). In the case of Doubleday Lodge, Members may recall that the application was refused in line with Officers' recommendation. The application sought to remove the majority of developer contributions which had been agreed as part of the original approved scheme. The reason being that due to additional unexpected costs, the proposal would be unviable if the developer was required to pay them. Although this application required a balancing of the harm of not providing the contributions against the benefits of affordable housing, the Inspector was extremely clear in that the viability report (the contents of which were assessed by the Council's independent consultants and conclusions agreed with), which demonstrated that the development would not be viable, carried significant weight. It is important to note that the Inspector commented that the applicant had complied with the relevant part of the policy which required an open book assessment in order to seek to reduce developer contributions.
- 3.07 In the case of the current application, the applicant's have, as set out in the previous Committee Report, demonstrated via an open book assessment that the development would not be viable. Therefore, as required by Policy DM 8 I also give very significant weight to the lack of viability that has been demonstrated in this case.
- 3.08 I do appreciate that the viability report which was submitted in the case of this current application dates from 2017. However, Officers have undertaken a further assessment of the variance in property prices since the date of the original viability report which would, due to a slight reduction, generate a slight reduction in expected returns. On this basis, it was considered that the viability evidence still carried significant weight. Despite this, the applicant has offered to provide an update to the viability report so that Members can be provided with up-to-date information. I have not received this at the time of writing this report, however, I have been informed that the intention is to provide this in advance of the Committee meeting. As such, once received this updated viability evidence will be provided as a tabled update to Members in advance of the Committee.
- 3.09 In addition to the above, the Inspector when deciding the Doubleday Lodge appeal, did not consider that the advancement of development in that case should weigh against the proposal. Instead, the view was taken that any further delay would have led to the applicant incurring further costs. I believe that the same assessment could be made here and as such even less weight, than the limited amount that was identified in the previous report, should be given to this factor weighing against the proposal.
- 3.10 Furthermore, from a practical perspective, if a registered provider was unable to provide affordable units on site, then the commuted sum approach would allow for delivery of units off-site. I have discussed the way in which commuted sums are used to provide affordable housing with the Council's Strategic Housing and Health Manager. In terms of this, as an example, in relation to the commuted sums received under the applications discussed in the previous Committee Report - 14/506623/OUT for 18 dwellings at 109 Staplehurst Road and 16/501883/FULL for 45 one and two bedroom dwellings at 4 Canterbury Road – the Council has agreed to support a RP with the delivery of affordable housing units in the Borough. The commuted sum, if provided in this case would also be put towards the delivery of affordable units, likely

through a similar arrangement. As such, I am very firmly of the view that if an RP is unable to bring forward on site affordable provision then the commuted sum can be used to enable the delivery of affordable housing off site, in the same way that the commuted sums in the above two cases have been.

#### **4.0 CONCLUSION**

4.01 As a result of the above, I am very firmly of the view that the proposal now provides for the potential for an RP to bring forward affordable units on this site. The level of affordable provision is proposed to be 3 units which in light of the adopted Local Plan and in the context of the viability evidence is in my view acceptable. However, due to the potential barrier of providing these units, as has been discussed in both this and the previous committee report, I am also of the firm view that having the commuted sum as a fall-back option provides the Council with the certainty that, if necessary, this scheme will contribute towards the provision of affordable housing elsewhere in the Borough.

4.02 On the basis of the above, I believe that in light of the viability evidence, the recent appeal decision and the revised proposal, this proposal is policy compliant. I therefore consider that there are no material planning grounds on which this proposal could be refused. As a result, if the Council were to refuse this application, I believe that there is the strong possibility that a subsequent appeal would be extremely difficult to successfully defend and that an award of costs could be made against the Council.

4.03 In conclusion, I take the view that the Section 106 should be amended on the basis of the wording as set out above and recommend that the modification is granted.

**5.0 RECOMMENDATION** – GRANT modifications to the existing Section 106 as set out above and delegation to agree the precise wording of the modified planning obligation under the instruction of the Head of Legal Services.

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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**APPENDIX 1**

Planning Committee Report – 7 March 2019

ITEM 1.1

**PLANNING COMMITTEE – 7 MARCH 2019**

**PART 1**

Report of the Head of Planning

**PART 1**

Any other reports to be considered in the public session

<b>1.1 REFERENCE NO - 18/503723/MOD106</b>			
<b>APPLICATION PROPOSAL</b> Modification of Planning Obligation dated 18/05/2010 under reference SW/08/1124 to allow removal of on site affordable housing.			
<b>ADDRESS</b> 153 London Road Sittingbourne Kent ME10 1PA			
<b>RECOMMENDATION</b> Grant Modification			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal would provide a commuted sum for off site affordable housing which is considered to be appropriate in these circumstances. The commuted sum has been set at a level which, when considered in the context of the viability evidence, is believed to be compliant with policy DM8 of the adopted Local Plan, despite the advancement of the development.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Cllr Mike Baldock			
<b>WARD</b> Borden And Grove Park	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Clarity Properties Ltd <b>AGENT</b> Brachers LLP	
<b>DECISION DUE DATE</b> 07/09/18	<b>PUBLICITY EXPIRY DATE</b> N/A		
<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>
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23 <sup>rd</sup> May 2016.	Approved	08.12.16
16/508336/NMAMD	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approved	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking	Approved	08.08.13

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	spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.		
SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access.	Approved	18.05.10

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

1.01 The application site is 0.09 hectares in size and rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (A2). The site lies to the west of Sittingbourne Town Centre and residential properties lie opposite and to the west of the site. A Petrol Filling Station is located on the opposite side of London Road slightly to the east.

1.02 Construction of the 26 residential units (granted planning permission as per the history section above) has begun on site and has reached an advanced stage.

**2.0 PROPOSAL**

2.01 The current proposal is to modify the Section 106 agreement attached to the original planning permissions (SW/08/1124 & SW/13/0568) to allow the removal of the requirement for on-site affordable housing. Among other things, the requirement of the Section 106 agreement is currently for the provision of 30% affordable housing on site (8 units), although a tenure split was not specified.

2.02 In addition, the Section 106 agreement required the following developer contributions:

- i) £227 per dwelling for library improvements;
- ii) an open space contribution of £17,940;
- iii) an adult social services contribution of £2362.85;
- iv) a community learning contribution of £981.05;
- v) a primary education contribution of £590.24 per dwelling; and
- vi) a secondary education contribution of £589.95 per dwelling.

2.03 Officer’s have negotiated with the applicant that prior to the occupation of the 21<sup>st</sup> unit, a commuted sum of £40,000 is to be paid in one instalment for off site affordable housing. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.

2.04 It is important at this point to set out the background to this application as Members may recall that a similar proposed modification was reported to Planning Committee on two separate occasions in 2017 for the removal of on site affordable housing - For clarity, there is no reference number for this previous application as it was not submitted separately as a formal modification to the Section 106 agreement, but rather as a proposed modification under the original planning permissions (as referenced above). Therefore I have included the previous committee reports related to this proposal as appendices to this report which I will summarise as follows.

**APPENDIX 1**

Planning Committee Report – 7 March 2019

ITEM 1.1

- 2.05 The previous application to modify the Section 106 was initially submitted proposing the removal of on site affordable housing, a viability appraisal upon occupation of the 21<sup>st</sup> unit and a commuted sum of a maximum of £31,000 if the scheme achieved a certain level of profit. This proposal was reported to the Planning Committee of 2<sup>nd</sup> February 2017 with an Officer recommendation of approval. Members resolved:  
*“That the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for offsite affordable housing, and that it can not be dependant upon their profit margins.”* As a result of this, the applicant undertook a viability appraisal which was independently assessed and concluded that the scheme would not be viable if affordable housing was provided. I have included this viability report and independent assessment as appendices to this report.
- 2.06 The application was reported back to Members at the 14<sup>th</sup> September 2017 Planning Committee meeting. The proposed modification was again to remove the requirement for on site affordable housing with a viability re-assessment submitted upon the occupation of the 21<sup>st</sup> unit. However, the proposal was altered to propose a commuted sum of a minimum of £31,000 if it was viable to do so, despite the conclusions of the viability appraisal and independent assessment as referred to above. There was again an Officer recommendation for approval. At the meeting, Members resolved that *“That the modification to the Section 106 Agreement for SW/08/1124 & SW/13/0568 be rejected and officers discuss alternative options with the applicant.”*
- 2.07 As set out above, the proposal considered in 2017 had not been submitted as a formal modification under Section 106A of the Town and Country Planning Act. Therefore, there was no requirement to issue a formal decision notice and there was no right of appeal for the applicant.

**3.0 POLICY AND OTHER CONSIDERATIONS****3.01 The National Planning Policy Framework (NPPF)**

Para 62: *“Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:*

- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and*
- b) the agreed approach contributes to the objective of creating mixed and balanced communities.”*

Para 57: *“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”*

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ITEM 1.1

3.02 National Planning Practice Guidance

Within the section entitled ‘Planning Obligations, the following is set out:

*“Planning obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, planning obligations should not prevent development from going forward.”*

And

*“Obligations should only be sought where they are necessary to make the development acceptable in planning terms. Where they provide essential site specific items to mitigate the impact of the development, such as a necessary road improvement, there may only be limited opportunity to negotiate. Where local planning authorities are requiring affordable housing obligations or tariff style contributions to infrastructure, they should be flexible in their requirements. Their policy should be clear that such planning obligations will take into account specific site circumstances.”*

The section entitled ‘Viability’ states the following:

*“Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required”*

And

*“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.*

*Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force.”*

And

*“The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, any change in site circumstances since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.”*

3.03 Bearing Fruits 2031: The Swale Borough Local Plan 2017

Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes 2014-2031); CP3 (Delivering a wide choice of high quality homes); DM8 (Affordable Housing).

Policy DM8 states that in Sittingbourne, the affordable housing provision sought (on developments of 11 dwellings or more) will be 10%. Furthermore, it states that *“In exceptional*

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Planning Committee Report – 7 March 2019

ITEM 1.1

*circumstances, and in accordance with a supplementary planning document to be prepared by the Borough Council:*

*a. on-site affordable housing provision may be commuted to a financial contribution to be used off-site, singly or in combination with other contributions.”*

The supporting text to policy DM8 at paragraph 7.3.10 states the following:

*“The starting point for any planning application is the on-site provision of affordable housing. In exceptional cases, the Council may consider affordable housing provision to be provided off-site. In such a case, it may be possible to require a commuted sum (or payment in lieu), which is an amount of money, paid by a developer to the Council when the size or scale of a development triggers a requirement for affordable housing, but it is not possible or desirable to provide it on the site. This option may be appropriate, for example, in cases of economic difficulties, where provision on an alternative site could be of higher quality, or where improvements to the quality of the existing housing stock are considered more appropriate.”*

**4.0 CONSULTATIONS**

4.01 Cllr Mike Baldock has commented that he would *‘like this returned to the Planning Committee.’*

4.02 I have had a number of discussions with the Council’s Strategic Housing and Health Manager regarding this application and I consider the most relevant comments to be as follows:

*“I can confirm that I have recently been advised by Optivo, Moat and Golding Homes that they are not accepting less than 20 - 60 affordable units per site. Therefore, it is likely that the developer would struggle to secure an RP for the three (or eight) affordable flats required on this site. Even if an RP were secured, I would expect the flats to be provided as shared ownership tenure only, although based on recent conversations with RP’s, marketing such a small number would be difficult and not cost effective.*

*The issue of securing an RP for very low numbers of affordable homes came to light recently after a developer of a small site at Swale Way notified us that they could not secure an RP to take on four affordable units. Therefore it was agreed to accept a new provider called ‘Landspeed’ who will deliver these four homes as intermediate housing only e.g. shared ownership or shared equity. Landspeed are not required to register with Homes England, like other ‘traditional’ RP’s, because they only deal with Shared Equity/Shared Ownership, they will not be the landlord of the units and they do not require grant funding to enable delivery.*

*To summarise, I think the likely outcome is that it would difficult to secure an RP here, and outside of agreeing to a commuted sum it is likely that the only other option would be a company such as Landspeed who could look to provide the flats as intermediate low-cost homeownership housing.”*

In addition, the following was stated:

*“It is questionable whether or not a Registered Provider (RP’s) will purchase and take on the management of such a low number of new build affordable flats, particularly as the units will be located within a mixed tenure block that includes open market sales.*

And then finally the Strategic Housing and Health Manager also stated that *“In this particular case I understand that a commuted sum may be necessary mainly due to potential issues in*

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*securing an RP, however I should note that a commuted sum is always less preferable to actual affordable housing delivery.”*

**5.0 BACKGROUND PAPERS AND PLANS**

- 5.01 The application includes a draft Section 106 agreement and a supporting statement.

**6.0 APPRAISAL**

- 6.01 The application now before Members has been formally submitted pursuant to Section 106A of the Town and Country Planning Act 1990. It was initially submitted on exactly the same basis as the original application described in the ‘Proposal’ section above (as reported to Members at the 2<sup>nd</sup> February 2017 Planning Committee), which for clarity was the removal of on site affordable housing, a viability appraisal upon occupation of the 21<sup>st</sup> unit and a commuted sum of a maximum of £31,000 if the scheme achieved a certain level of profit. However, as a result of negotiation between Officer’s and the applicant, the proposal has now been amended to seek modification of the Section 106 Agreement to remove the requirement for on site affordable housing and the payment of a commuted sum for off site affordable housing of £40,000 in one instalment, prior to the occupation of the 21<sup>st</sup> unit. This payment will not be dependant on a further viability appraisal.
- 6.02 As referred to above, the application considered in 2017 included a viability appraisal which the supporting statement submitted with the current application refers to. Having assessed the independent review of this viability appraisal and the committee reports presented to Members in 2017, the conclusion is clear in that the development would be unviable if the requirement for 30% of the dwellings (8 units) were required to be affordable. I do appreciate that time has passed between the original viability appraisal and now. Therefore, in terms of the weight to be given to this I have researched property prices in the locality of the application site. This shows that in the past 12 months, property prices for flats in the same postcode area as this site in Sittingbourne, have in fact fallen by 1.25% (although this is a limited sample size). However, when I have searched for Sittingbourne as a whole, property prices for flats have fallen by 2.04%. As a result of this I am of the view that the viability assessment which was submitted to support the previous application would still be relevant and still carries weight in the decision making process.
- 6.03 I have also taken into consideration that as set out in policy DM8 of the Local Plan, the affordable housing requirement on sites in Sittingbourne is 10%. This is a reduction from the previous Local Plan’s requirement of 30% which was the level when the previous Section 106 agreement was signed. This also gives a further indication of the viability issues which have impacted upon sites in Sittingbourne and in my view gives some additional weight to the applicant’s viability argument. I also note the Committee’s previous references to profit margins as referred to in paragraph 2.05 above. Through case law and Government guidance, a gross development profit of around 20% would be considered ‘normal’. In this case, as shown by the viability assessment, the developer has sought to demonstrate that they would be making a profit of 0.65%. As such, it appears that the developer is not likely to make any significant profit on this site.
- 6.04 Further to the receipt of the current application I have liaised with the Council’s Strategic Housing and Health Manager. I also note from the previous committee reports that the Strategic Housing and Health Manager was involved at the point that the previous proposals were considered and was supportive of the commuted sum approach. As set out above, the Strategic Housing and Health Manager in respect of this current proposal has commented that although on site affordable housing is generally preferable, in this case a commuted sum is necessary. As stated

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above, part of the reason for this is that Registered Providers (RP's) are becoming increasingly unwilling to provide small numbers of affordable units in mixed blocks, therefore in this case the principle of a commuted sum, which would go towards affordable housing being provided elsewhere in the Borough is acceptable in my view. On this basis I am of the view that in these specific circumstances a commuted sum approach would be compliant with part 5.a of policy DM8 as quoted in the policy section above.

- 6.05 In terms of what is considered to be an appropriate amount, I have assessed other applications in Sittingbourne where a commuted sum was received. Firstly, I note the application approved under 14/506623/OUT for 18 dwellings at 109 Staplehurst Road where a commuted sum of £65,000 was agreed after a viability assessment. At the time the Local Plan required 30% of dwellings to be affordable (on developments of over 14 units) which would equate to 5 units in this case. In terms of an application approved at No.4 Canterbury Road, Sittingbourne for 45 one and two bed apartments, after the submission of a viability appraisal, a commuted sum for affordable housing of £62,300 was agreed, although the committee report sets out this would equate to 0.92 affordable units. As such, these figures have been arrived at via a viability report, rather than a set calculation.
- 6.06 Therefore in terms of this current application, based upon the viability report setting out that no affordable housing would be viable, and then considering the previous proposals that have been put forward to modify the Section 106 agreement, I am of the view that a commuted sum of £40,000 is appropriate and would in these very specific circumstances be compliant with policy DM8 of the Local Plan. Furthermore, unlike the previous proposal, the commuted sum will not be reliant on a further viability appraisal and would be paid in one instalment prior to the occupation of the 21<sup>st</sup> unit. On the basis of the viability report which I consider to still carry weight, and as this broadly aligned with the trigger point originally proposed I believe this to be reasonable. Furthermore, as there will not be a requirement for a further viability appraisal as set out above I am of the view that this provides more certainty for the Council if this modification was to be approved than under the terms of the previous proposal.
- 6.07 I do appreciate that Members may, quite reasonably, consider that the argument of a lack of viability carries less weight when the scheme has reached the advanced stage of development as is very clearly the case here. In terms of this, usually, the reason for taking viability into account is the resultant impact that this could have upon the delivery of the development. As the development is nearing completion then the risk that the development does not proceed in the first instance doesn't apply in this case. However, when considering this, I also give weight to the proposal as originally considered in 2017 which set the trigger point of the viability re-assessment upon the occupation of the 21<sup>st</sup> unit. This means that Officer's had previously factored in the expectation that the development would be completed before the viability was re-assessed. Therefore this principle remains the same whereby the payment will be made prior to the occupation of the 21<sup>st</sup> unit (at which point the development would be complete). As such, although I believe that the advancement of the development should weigh against granting this proposed modification, for this reason, I do not believe that this should weigh so heavily against the acceptability of the proposed modification in these circumstances as what might usually be the case.
- 6.08 In addition to the above consideration of the weight to be given to the advancement of the development, I also believe that the comments of the Council's Strategic Housing and Health Manager are of importance. In terms of this, I consider that the obstacles there may be to providing on site affordable housing in these circumstances would be relevant as a factor, whether the development had begun or not. As a result, this further leads me to believe that the near completion of the development should not weigh so heavily against the proposed modification in the specific context of this application.

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6.09 In undertaking the assessment of the final planning balance, I give weight to the viability report (and independent assessment) carried out in 2017 and that the scheme would be providing, what is considered in this specific case, a commuted sum in accordance with the exceptional circumstances as set out in policy DM8. Although the advancement of the scheme without any guarantee that this modification will be accepted weighs somewhat against the proposal, I have factored in that the trigger point at which the further viability report was to be submitted (as per the original application to modify the Section 106 agreement) was set after the completion of the development. As a result, it was taken into consideration and accepted by Officer's previously that the scheme would be delivered before this re-assessment took place. Therefore, as the payment trigger remains subsequent to completion I do not believe that the advancement of the development would in this case outweigh the reasons I have identified for granting the modification. Furthermore, I give weight to the view that RP's could have difficulty in providing on site affordable housing in this case. Due to the above assessment, on balance, I am of the view that the modification is acceptable.

**7.0 RECOMMENDATION** – GRANT modifications to the existing Section 106 as set out above and delegation to agree the precise wording of the modified planning obligation under the instruction of the Head of Legal Services.

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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18/503723/MOD106 - 153 London Road  
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<b>2.9 REFERENCE NO - SW/08/1124 &amp; SW/13/0568</b>			
<b>APPLICATION PROPOSAL</b>			
Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21 <sup>st</sup> unit and a commuted sum payable at a maximum of £31,000 for off-site affordable housing. Original application - to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.			
<b>ADDRESS</b> 153 London Road, Sittingbourne, Kent, ME10 1PA			
<b>RECOMMENDATION</b> Grant modification			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
On-site affordable housing would be difficult to provide. Allowing a viability re-assessment once the development has commenced and upon occupation of the 21 <sup>st</sup> unit, would ensure that a commuted sum is secured for off-site affordable housing, subject to there being a profit above 17%. This modification of the Section 106 agreement responds to the changing financial and property markets in difficult economic times. The modification would allow the development of much needed housing to be provided within an urban and sustainable site. It would also significantly improve the appearance of the site which is an eyesore in a prominent position.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Modification of Section 106 agreement			
<b>WARD</b> Grove Ward	<b>PARISH/TOWN COUNCIL</b> Sittingbourne	<b>APPLICANT</b> Clarity Properties Ltd <b>AGENT</b> Mr Keith Plumb	
<b>DECISION DUE DATE</b> 08/08/13	<b>PUBLICITY EXPIRY DATE</b>	<b>OFFICER SITE VISIT DATE</b> 09/01/17	
<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>
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approval	08.12.16
16/508336/NMAMD	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approval	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.	Approval	08.08.13

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SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access.	Approval	18.05.10
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**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is 0.09ha and is rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (the A2). On the site is a partially demolished two ½ storey building and a single storey flat roof building to the rear of the site.
- 1.02 The site lies to the west of Sittingbourne Town Centre. Residential properties lie opposite and to the west of the site. There is a Petrol Filling Station on the opposite side of London Road slightly to the east. The site is currently messy and unsightly.

**2.0 PROPOSAL**

- 2.01 Planning permission was originally granted under SW/08/1124 for the demolition of existing buildings and redevelopment of the site to provide 12, two bedroom apartments, 14, one bedroom apartments with amenity space and parking and a new vehicular access. Permission to extend the time limit for implementation of the development was granted under SW/13/0568. Application reference 16/508336/NMAMD later corrected the description to accurately reflect the approved plans which showed 13 one bedroom and 13 two bedroom apartments.
- 2.02 An application for a Lawful Development Certificate (16/507631/LDCEX) was later submitted to establish that the 2008/2013 permissions had been implemented by virtue of development commencing prior to the expiration of the time limit imposed. In this case, the partial demolition of the property constituted the commencement of development. The certificate was issued confirming that the permission was extant. We are currently considering the details submitted pursuant to conditions attached to the 2008/2013 permissions. Upon approval of these details, the approved development can continue.
- 2.03 I understand that the applicant was required to start the demolition process due to the unsafe state of the building fronting onto London Road. This Council served a Stop Notice on the applicant once this demolition was started because the work did not have the benefit of prior approval or planning permission. There has been no work on site since then. The applicant is aware that the conditions details, including contaminated land, will need to be agreed before any further work is carried out on site. I am informed by the planning agent that the required contaminated land surveys are being carried out and will be submitted shortly.
- 2.04 The current proposal is to modify the Section 106 agreement attached to the original permissions (SW/08/1124 & SW/13/0568) to allow removal of the requirement for on-site affordable housing. Among other things, the requirement of the Section 106 agreement is currently for the provision of 30% affordable housing on site (8 units), though a tenure split was not specified.

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2.05 In addition, the Section 106 agreement required the following developer contributions:

- i) £227 per dwelling for library improvements;
- ii) an open space contribution of £17,940;
- iii) an adult social services contribution of £2362.85;
- iv) a community learning contribution of £981.05;
- v) a primary education contribution of £590.24 per dwelling; and
- vi) a secondary education contribution of £589.95 per dwelling.

2.06 We have negotiated with the applicant that a viability re-assessment would be submitted upon the practical completion of the 21<sup>st</sup> unit and a commuted sum payable at a maximum of £31,000 (plus an adjustment for inflation) for off-site affordable housing. This would be paid in three installments: 1<sup>st</sup> – practical completion of 21<sup>st</sup> unit, 2<sup>nd</sup> - practical completion of the whole scheme and 3<sup>rd</sup> – sale of 26<sup>th</sup> unit or 6 months after the 2<sup>nd</sup> instalment, whichever is sooner. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.

**3.0 POLICY AND OTHER CONSIDERATIONS**

3.01 The National Planning Policy Framework (NPPF) – paragraph 173 is quoted below.

3.02 National Planning Practice Guidance (NPPG): Viability & Planning Obligations

3.03 Swale Borough Local Plan 2008: SP1 (sustainable development); SP4 (housing) and; H3 (affordable housing).

3.04 Bearing Fruits 2031 The Swale Borough Local Plan Proposal Main Modifications June 2016: ST1 (sustainable development); ST2 (development targets for jobs and homes); CP3 (delivering a wide choice of high quality homes) and; DM8 (affordable housing).

3.05 Supplementary Planning Documents: Developer Contributions 2009

3.06 Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations.

**4.0 CONSULTATIONS**

4.01 The Head of Housing has been involved in the discussions and negotiations throughout and is in agreement with the commuted sum approach in this case and to the payment being capped at £31000 plus indexation. This is in response to a number of viability assessments that have been submitted - one in 2012, one in 2015 and the most recent in 2016. Each appraisal has shown that the scheme would be unviable if affordable housing were to be provided on site. They have agreed since 2012 that a commuted sum in lieu of on-site affordable housing would be acceptable.

4.02 With regard specifically to the possible availability of grant funding, she comments as follows:

*"The current grant programme (Shared Ownership Affordable Homes Programme 2016-21) is for the delivery of shared ownership product only with limited affordable rent tenure for specialist/supported housing. Therefore our current affordable homes delivery programme is based solely around shared ownership with zero affordable*

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*rent. This also means that our 'new' policy split of 90% affordable rent tenure with 10% shared ownership will be difficult to meet, as has been the case so far."*

**5.0 BACKGROUND PAPERS AND PLANS**

5.01 Draft Section 106 agreement & application documents and plans for SW/08/1124 & SW/13/0568.

**6.0 APPRAISAL**

**Principle of Development**

6.01 As noted above, Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations. NPPG – Planning Obligations states:

*"Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way".*

6.02 In this case the planning obligation is over 5 years old, being completed on 18<sup>th</sup> May 2010, and so the developer could have applied formally to the council for this modification. However, all negotiations to date have being successfully undertaken without the need for the formal application.

6.03 In April 2013, the Government produced guidance on Section 106 Affordable Housing Requirements. This introduced a new temporary procedure, with the ability to appeal, for the review of planning obligations were it relates to affordable housing under Section 106BA of the Town and Country Planning Act. The guidance notes at paragraph 2 that:

*"Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to housing building. The Government is keen to encourage development to come forward, to provide more homes to meet a growing population and to promote construction and economic growth. Stalled schemes due to economically unviable affordable housing requirements result in no development, no regeneration and no community benefit. Reviewing such agreements will result in more housing and more affordable housing than would otherwise be the case."*

6.04 Although this procedure was repealed in April 2016, the guidance referred to above and the change in legislation sets the tone for negotiations on the loosening of requirements to provide affordable housing on schemes that were approved at a time of economic difficulty and for schemes that are proving difficult to get off the ground, such as 153 London Road.

6.05 Now that the temporary change in legislation has come to an end, the modification of planning obligations can still take place under Section 106A but, arguably, under a less, streamlined process and without the right to appeal.

6.06 NPPG - Viability, notes that viability can be important where planning obligations or other costs are being introduced. In these cases decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support

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development and promote economic growth. The guidance states that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the development to be unviable, the local planning authority should be flexible in seeking planning obligations. This is particularly relevant for affordable housing contributions which are often the largest single item sought on housing developments. These contributions should not be sought without regard to individual scheme viability. The financial viability of the individual scheme should be carefully considered in line with the principles in this guidance.

## 6.07 Paragraph 173 of the NPPF states:

*"...To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."*

6.08 In the case of 153 London Road, the guidance is clear that we should be flexible in terms of the provision of affordable housing. The applicant has submitted three separate viability assessments, one in 2012, one in 2015 and the most recent in October 2016. All of these assessments demonstrate that the scheme would be unviable with affordable housing provided on site. It is my strong view that the proposed modification would allow the development of the site to come forward much more quickly than it would do if affordable housing was required to be provided on site at 30%. The requirement for a viability re-assessment, which would be independently assessed, will ensure that if the developer makes a profit above 17% (which is considered to be a reasonable % for developer profit and has been similarly applied to other schemes), a contribution of £31,000 (index linked) will be paid to the Council. This would be used towards the provision of affordable housing elsewhere within the Borough. The capping of the contribution at £31,000 gives the developer the certainty that they require in order to secure the necessary funds to develop the site. I consider that this is reasonable in this case.

6.09 The figure of £31,000 has been arrived at following extensive negotiations. The developer had originally offered a much smaller figure of £19,800 based on their calculations of the value of the market value of the 8 affordable units. We queried this figure based on our knowledge of larger commuted sums that had been secured on sites within close proximity to 153 London Road. The developer has agreed to pay this higher figure on the terms set out at paragraph 2.06 above.

6.10 Allowing the planning obligation to be modified in the way proposed will enable the provision of much needed housing and would improve the appearance of the site which I consider is, at present, an eyesore.

**7.0 CONCLUSION**

7.01 The proposal to modify the planning obligation in respect of the affordable housing provision on site would enable the development of much needed housing to come forward and would result in a significant visual improvement of the site. These factors weight significantly in favour of the modification which would see the loss of all on-site affordable housing. However, the scheme would still be subject to a viability re-assessment which would see £31,000 secured towards off-site affordable housing, should the developer make a profit of more than 17%.

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**8.0 RECOMMENDATION** – To Grant modifications to the existing Section 106 as set out above and delegation to agree the precise wording of the modified planning obligation under the instruction of the Head of Legal Services.

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

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

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**REPORT SUMMARY**

<b>REFERENCE NO - SW/08/1124 &amp; SW/13/0568</b>			
<b>APPLICATION PROPOSAL</b>			
Modification of Section 106 agreement to allow removal of on-site affordable housing with a viability re-assessment submitted upon occupation of the 21 <sup>st</sup> unit and a commuted sum payable at a <u>minimum</u> of £31,000 for off-site affordable housing. Original application - to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.			
<b>ADDRESS</b> 153 London Road, Sittingbourne, Kent, ME10 1PA			
<b>RECOMMENDATION</b> Grant modification			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
On-site affordable housing would not be viable to provide. Allowing a viability re-assessment once the development has commenced and upon occupation of the 21 <sup>st</sup> unit, would ensure that a commuted sum is secured for off-site affordable housing, subject to there being a profit above 20%. This modification of the Section 106 agreement responds to the changing financial and property markets in difficult economic times. The modification would allow the development of much needed housing to be provided within an urban and sustainable site. It would also significantly improve the appearance of the site which is an eyesore in a prominent position.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Modification of Section 106 agreement			
<b>WARD</b> Grove Ward	<b>PARISH/TOWN COUNCIL</b> Sittingbourne	<b>APPLICANT</b> Clarity Properties Ltd <b>AGENT</b> Mr Keith Plumb	
<b>DECISION DUE DATE</b> 08/08/13	<b>PUBLICITY EXPIRY DATE</b>	<b>OFFICER SITE VISIT DATE</b> 09/01/17	
<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>
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approval	08.12.16
16/508336/NMAM D	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approval	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular	Approval	08.08.13

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	access) in order to extend the time limit for implementation.		
SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access.	Approval	18.05.10

**MAIN REPORT**

**1.0 INTRODUCTION**

1.01 The proposal to modify the Section 106 agreement as set out above was brought before Members of the Planning Committee on 2<sup>nd</sup> February 2017. The original committee report and the relevant minutes of this meeting are appended.

1.02 Members resolved that the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for offsite affordable housing, and that it cannot be dependent upon their profit margins. Members also requested that the viability assessment be made available to them when the proposed modification is reported back to them. The viability assessment is provided under Part 6 of this agenda as the information contained within it is financially sensitive.

1.03 In response to Members' concerns, the developer instructed his financial advisor to provide an up to date viability assessment to enable the Council to review it. Officers have commissioned an independent review of this viability assessment by CBRE. The report on this review is provided under Part 6 of this agenda.

1.04 Members are asked to refer to the original report that is appended in respect of the history of the site, planning policy, consultee responses, background papers and appraisal.

1.05 Since the proposed modification was reported to the February Planning Committee, the Bearing Fruits 2031: Swale Borough Local Plan 2017 (adopted LP) has been adopted. Policy DM8 of the adopted LP in part states:

*"...In exceptional circumstances, and in accordance with a supplementary planning document to be prepared by the Borough Council:*

*a. on-site affordable housing provision may be commuted to a financial contribution to be used off-site, singly or in combination with other contributions. Commuted sums may also be considered in respect of sites at Faversham and the rural areas so as to support the provision of affordable housing in less viable locations; or*

*b. where no Registered Social Landlord is available, the full affordable housing provision requirement will be cascaded to another provider and/or site or via a commuted sum, its calculation having regard to the full amount of market housing that has been achieved on the site; or*

*c. where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable, a reduced requirement may be considered and will be subject to a legal agreement to ensure that full provision of*

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*affordable housing is reconsidered should land values rise prior to the commencement of development or any subsequent phases and/or an adjustment made to the tenure split.*

*If evidence demonstrates that economic conditions, or the proposed characteristics of the development or its location, have positively changed the impact of viability of the provision of affordable housing, the Council will seek a proportion of affordable housing closer to the assessed level of need, or higher if development viability is not compromised."*

1.06 Under Policy DM8, for development in Sittingbourne of 11 or more dwellings, 10% affordable housing is required as opposed to the previous 30% under the old Local Plan 2008.

1.07 Since the February Planning Committee, the building that was on the application site has been demolished, the land cleared and foundations have been laid.

**2.0 APPRAISAL**

2.01 Members will have read in the original committee report that the principle of modifying a Section 106 agreement in respect of the level of affordable housing is accepted in National Planning Policy, providing that a viability assessment demonstrates that a reduction is justified.

2.02 Policy DM8 of the adopted LP also allows the level of affordable housing to be reviewed under a viability assessment and a reduction allowed:

*"...where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable, a reduced requirement may be considered..."*

2.03 It goes on to seek to ensure that a clause is built into the revised Section 106 to allow a review of the viability at a certain trigger point with the aim of capturing an increase in sale prices, profit for the developer and/or uplift in land value.

2.04 The proposed modification to remove the requirement for affordable housing to be required on the application site would meet the requirements of Policy DM8 in my view. The viability assessment that has been submitted has been independently reviewed by CBRE (see report at part 6 of this agenda) and they conclude that the revised proposal submitted by the applicant is reasonable:

*"In light of the review undertaken and assumptions applied, CBRE's analysis shows that the scheme cannot support the delivery of on-site affordable housing in addition to the £40,000 S106 contribution allowed for. Therefore we consider the applicant's offer of £40,000 S106 contributions and a viability review following the occupation of the 21<sup>st</sup> unit with a minimum additional payment of £31,000 to be reasonable.*

*However as noted in paragraph 5.12 above we would suggest that there is a formal viability review undertaken at the point of occupation of the 21<sup>st</sup> unit utilising an agreed baseline appraisal. We believe this should be a condition of the planning consent. This should test whether a payment above the £31,000 offer be applicable at that point in time."*

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- 2.05 Members may have noted that the developer has agreed to change the terms under which the viability re-assessment would be based, referring to a minimum commuted sum of £31,000 as opposed to a maximum commuted sum of £31,000. It is entirely reasonable, as Members rightly considered at the February planning committee (see minutes as appendix A), that the commuted sum should be based on the amount that the developer can afford to pay at the time, as demonstrated in a viability re-assessment.
- 2.06 As noted at paragraph 2.06 of the original report, we have negotiated with the applicant that a viability re-assessment would be submitted upon the practical completion of the 21<sup>st</sup> unit. Should the viability re-assessment demonstrate that the scheme can afford a commuted sum payment, a minimum of £31,000 (plus an adjustment for inflation) for off-site affordable housing would be made to the Council. This would be paid in three installments: 1<sup>st</sup> – practical completion of 21<sup>st</sup> unit, 2<sup>nd</sup> - practical completion of the whole scheme and 3<sup>rd</sup> – sale of 26<sup>th</sup> unit or 6 months after the 2<sup>nd</sup> instalment, whichever is sooner. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.
- 2.07 In response to Members concerns about the provision of affordable housing being dependant upon the developer's profit, it is entirely reasonable for the developer to make a profit from the development. Indeed, paragraph 173 of the NPPF states:
- "...To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."*
- 2.07 Delivery of housing in this Borough and across the country is dependent on profit-making developers. It is widely recognised that a reasonable level of profit for a developer is within the range of 17.5-20%. As Members will see from the submitted viability assessment (see part 6), the developer seeks to demonstrate that they would actually be making a profit at 0.65%. Given the significantly reduced profit level for this development, the developer's financial advisor states:
- "In my opinion, this scheme is such a long way off being viable that any Section 106 payments at all simply adds to the costs and will reduce the viability further. However, as previously mentioned the developer is keen to build the scheme and exit the site and is willing to honour the previous commitment to provide a total package of £40,000 in payments, almost double the total projected profit of this scheme."*
- 2.08 CBRE have conducted their viability assessment based on a 18.5% profit and consider this to be reasonable noting that in their experience elsewhere, a higher profit margin has been accepted. Despite the differences on the profit assumptions, CBRE continue to conclude that it would not be viable to provide affordable housing on this site.

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- 2.09 Members should note that the developer has requested that the viability re-assessment should be based on the developer receiving a 20% profit. The developer's financial advisor justifies this as follows:

*"It is widely accepted that, for a scheme to be technically viable in planning terms, an acceptable return for a developer is in the range of 17.5% to 20%. On complex brownfield sites, and particularly post-Brexit, it is widely accepted that returns will be at the upper end of this spectrum going forward, certainly much closer to 20%. As alluded to previously in this Report, the profit margin is crucial for absorbing unexpected shocks in the economy, along with hidden costs on brownfield sites, and is a suitable sum commuted on the risk taken by the developer.....*

*...I believe in this case, a reasonable return to the land owner would be recouping the costs of the 2007 purchase of the site, which stands at £630,000. Additionally, a willing developer would reasonably be expected to make a return in the region of 17.5% to 20%, as supported by the research paper in Appendix B [see part 6 item]. This return insulates the developer from risk and wider economic factors, which is particularly prevalent in this case considering the time of the site purchase."*

- 2.10 As CBRE have based their appraisal on a profit of 18.5%, I would advise Members that this should also be the basis of the re-assessment and not the 20% as suggested by the applicant's financial advisor.
- 2.11 In summary, CBRE and the developer's financial advisor conclude that the scheme would be unviable without the removal of the requirement for affordable housing at this site. The developer is, however, willing to build in a review of the viability upon occupation of the 21<sup>st</sup> dwelling allowing a commuted sum of a minimum of £31,000 to be released if it is viable to do so. This is entirely compliant with Policy DM8 of the adopted LP and the relevant paragraphs of the NPPF. There is no reason why the Section 106 should not be modified in the way that is being requested by the developer.

**3.0 CONCLUSION**

- 3.01 The proposal to modify the planning obligation in respect of the affordable housing provision on site would enable the development of much needed housing to come forward. This factor weighs significantly in favour of the modification which would see the loss of all on-site affordable housing. However, the scheme would still be subject to a viability re-assessment which would see at least £31,000 secured towards off-site affordable housing, should the developer make a profit of more than 20%. The proposed modification would be entirely compliant with the adopted LP and the relevant paragraphs of the NPPF.
- 8.0 **RECOMMENDATION** – To Grant modifications to the existing Section 106 as set out above and delegation to agree the precise wording of the modified planning obligation under the instruction of the Head of Legal Services.

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

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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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## 153-155 London Road, Sittingbourne, Kent, ME10 1PE - Viability Report

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Prepared for Clarity Properties Limited and Swale Borough Council  
8<sup>th</sup> June 2017

Tim Mitford-Slade MLE MRICS

Planning Application Reference: SW/13/0568 which supersedes planning permission SW/08/1124.

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**1. Executive Summary**

- 1.1 I have been instructed by Clarity Properties Limited to carry out an independent financial appraisal of the proposed development scheme for which planning permission was granted under reference SW/13/0568, along with a Section 106 Agreement, for the redevelopment of 153-155 London Road, Sittingbourne, Kent, ME10 1PE ("the Property"). The planning decision notice is attached as **Appendix A**. This independent financial appraisal is required in order to assess the viability implications of proposed planning obligations in respect of affordable housing and wider Section 106 costs.
- 1.2 This Viability Report supports the planning permission for redevelopment of the Property to provide 26 flats together with new access, parking, cycle store and amenity space following demolition of the existing buildings. The site is also subject to a Section 106 Agreement, although it has already been accepted that the developer cannot provide on-site affordable housing. Instead, on a without prejudice basis the developer is willing to make a contribution towards off-site housing, as put to members of the planning committee on 2<sup>nd</sup> February 2017. The planning committee deferred the application to advise the developer to provide affordable housing, or increase the contribution. Having assessed the reasons behind this decision, this Report sets out my opinion that the planning committee has ignored the principles set out in the National Planning Policy Framework ("NPPF") which form the basis of viability assessments, namely the entitlement of a willing landowner or willing developer to receive competitive returns to enable the development to be deliverable. Subsequently, this Viability Report seeks to address whether or not the proposed scheme can be delivered in compliance with existing policy or whether or not, on viability grounds, due regard needs to be given to the quantum, if any, of affordable housing and wider Section 106 obligations.
- 1.3 I have given due regard to the NPPF, The Royal Institution of Chartered Surveyors Guidance Note 1<sup>st</sup> Edition *Financial Viability in Planning* and the "Harman" report being *Viability Testing Local Plans* produced by the Local Government Association, The Home Builders Federation and the NHBC chaired by Sir. John Harman June 2012. The guidance contained in these documents has assisted in formulating the opinions set out in this report.
- 1.4 Having undertaken a detailed analysis of the proposed development I have reached the conclusion that the scheme remains unviable even with a Section 106 contribution in the form of a fixed commuted sum of only £40,000 (made up of £36,191 as requested, and topped up to £40,000). The developer purchased the site at a market peak in 2007, and has since weathered a severe economic downturn and incurred significant holding costs over the course of a decade. Therefore, despite the

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blatant unviability of this project, the developer is willing to build out the project as an exit strategy to recoup some of the costs outlaid. Any additional Section 106 costs would only weaken the financial ability of the developer to do so. Although I accept the council would lose out on financial contributions, there are clear benefits to this strategy, such as eradicating an eyesore on an arterial route into town which is an obvious magnet for antisocial behaviour.

- 1.5 The developer is willing to bring the site forward given their long standing involvement during a difficult period in the housing market, albeit accepting that margins are now essentially non-existent. They can only do so without the burden of further Section 106 costs over and above the £40,000 allowed for. I also note that the costs being incurred whilst being unable to develop the site, such as security and interest, are only like to erode the viability of this figure as time goes on. At committee, the developer offered a further commuted sum of £31,000 payable at pre-determined trigger points if and when the development yields an appropriate profit margin. This offer will be withdrawn if the application is again deferred or refused as this viability report clearly identifies that it cannot be justified under viability grounds.

**2. The Site**

- 2.1 The Property is located on London Road (A2) just outside Sittingbourne town centre in the County of Kent. London Road itself is characterised by Victorian terraced residential properties in a linear formation interspersed with a handful of commercial premises and a large state school. The Property itself is bound to the north by the A2 with residential dwellings and a petrol filling station beyond. To the east and south of the Property lies a Wickes DIY store with associated parking. This site is understood to have previously been occupied by Berpul Chemical Products operating as a fertiliser factory. Immediately to the west of the Property lies a detached bungalow and its associated garden with residential dwellings beyond.
- 2.2 The Property is located approximately 1 mile west of Sittingbourne town centre and 1 mile east of the A249 junction which provides a link onto Junction 5 of the M2 and Junction 10 of the M20. The M2 provides access to the coast in one direction and on towards London (46 miles) in the other. Nearby towns include Faversham (7 miles), Rainham (7 miles), Sheerness (10 miles), Maidstone (12 miles) and Canterbury (16 miles). There is a bus stop almost directly opposite the Property which provides transport to various local towns and there is a mainline station at Sittingbourne which connects to London Victoria with an estimate journey time of 60 minutes. Sittingbourne town centre provides a full range of retail, business, leisure, educational and civic amenities with a further range in nearby towns. An ESSO garage is within 50 metres of the subject Property on the opposite side of London Road along with a local newsagent.
- 2.3 The site extends to approximately 0.35 acres (0.14 hectares) and is roughly rectangular in shape and of gently sloping topography from the southern to northern boundary. It is currently occupied by a derelict building which has been subject to extensive fire damage. The rest of the site is hard surfaced, brownfield land. It should be noted that I have not seen a copy of the Title Plan and these boundaries are therefore indicative only and ought to be verified by the lender.
- 2.4 The original access to the Property off London Road has been blocked up and a new access has been created to the east over the new adopted standard road to the Wickes DIY store. This new arrangement is to satisfy the requirements of the Highways Authority and the trade-off is that Wickes

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have provided some additional land including six parking spaces. The area of the site has therefore been marginally extended to the east since it was purchased by the Borrower. At present, the Property provides the remains of a fire damaged office to the front with a number of lock-up garages to the rear.

**3. Background**

- 3.1 Planning permission was granted by Swale Borough Council under application reference SW/08/1124 for "demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 car parking spaces and cycle store and new vehicular access". The site is also subject to a Section 106 Agreement which requires a secondary education contribution of £589.95 per 2-bedroom flat, a library contribution of £227 per dwelling, an adult education contribution of £180 per dwelling and an open space contribution of £17,940. Furthermore, the policy requires 30% of the residential units to be affordable, which is defined as "subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market". This report has been commissioned to establish exactly what quantum of affordable housing and Section 106 costs can be borne by the proposed scheme whilst remaining viable in planning terms.
- 3.2 Planning permission was granted on 8<sup>th</sup> August 2013 under the reference SW/13/0568 to "replace an extant planning permission SW/08/1124" in order to "extend the time limit for implementation". The notification of grant of permission again referred to the Section 106 Agreement relating to this development.
- 3.3 A modification of the Section 106 agreement went to planning committee on 2<sup>nd</sup> February 2017. It proposed that on-site affordable housing was removed, with a viability re-assessment submitted upon occupation of the 21<sup>st</sup> unit and a commuted sum payable at a minimum of £31,000 for off-site affordable housing. The chairman moved the officer recommendation to approve the application and this was seconded. However, following the meeting the resolution was to defer the application 'to allow officers to advise the developer to either provide affordable housing or more than £31,000 for off-site affordable housing, and that it cannot be dependent upon their profit margins'. Upon conclusion of this Viability Report, it is my opinion that the sum offered by the developer was in excess of what should be considered reasonable, and it would now be unrealistic to expect any offer over and above the £40,000 in Section 106 costs that is already agreed, comprising just £3,809 towards affordable housing. The developer is nevertheless prepared to commit to the additional £31,000 as put to the committee but this offer will be withdrawn if the application is again deferred or refused as this viability report clearly identifies that it cannot be justified under viability grounds.
- 3.4 I have had sight of the notes, which I feel reflect a wider sentiment of frustration towards developers which has unfairly been aimed towards this particular project. Firstly, it is unreasonable to demand a developer does not take into account their profit margin – a just reward for the risk taken in property development, and a suitable way of limiting losses in the effect of wider market conditions which are out of the developer's control. More agreeable is the view of the Senior Planning Officer, who rightly pointed out that while affordable housing may have been viable in 2008 with the housing market at its peak, that does not mean it is now. Since then there have been huge economic consequences resulting from the recession which continue to impact interest rates, lender sentiment, house prices, building costs and developer confidence. Indeed, an attached Strutt & Parker research paper (Appendix B) refers to a BNP Paribas report which indicated developers were working on profit margins of 15-17% of GDV in 2007, which has resulted in banks now demanding higher profit margins

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to reflect “perceived and actual risk”. It should be expected that developers and lenders alike are much more cautious and responsible in the market now, which is reflected within my viability appraisals.

3.5 The NPPF refers to ensuring viability and delivery of development at Sec. 173-177 and states “to ensure viability, the costs of any requirement likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should when taking account of the normal cost of development and mitigation provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable”. I believe in this case, a reasonable return to the land owner would be recouping the costs of the 2007 purchase of the site, which stands at £630,000. Additionally, a willing developer would reasonably be expected to make a return in the region of 17.5% to 20%, as supported by the research paper in Appendix B. This return insulates the developer from risk and wider economic factors, which is particularly prevalent in this case considering the time of the site purchase.

**4. Basis of Appraisals**

4.1 The appraisals and figures provided herein do not strictly speaking fall within the scope of the RICS (Royal Institution of Chartered Surveyors) “Red Book” and is not a formal valuation in that context. However, the principles of good practice have been followed and detailed justification for the indicative values and/or component valuation appraisals are provided. More to the point, the appraisal is in direct line with the RICS Guidance on Financial Viability in Planning.

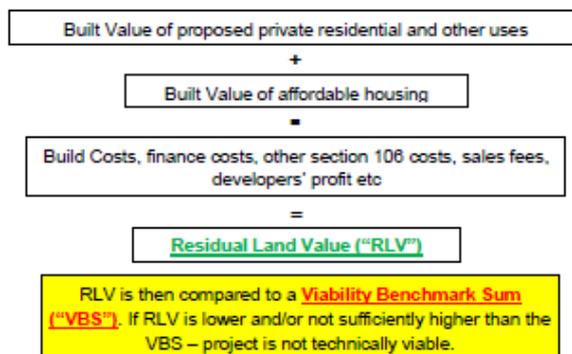
4.2 The report is provided purely to assist planning discussions with Swale Borough Council.

4.3 The viability report is provided on a confidential basis and I therefore request that the report should not be disclosed to any third parties (other than Swale Borough Council and their advisers), under the Freedom of Information Act 2000 (Section 41 and 43/2) or under the Environmental Information Regulation. The report is not to be placed in the public domain. In addition, I do not offer Swale Borough Council, their advisers and/or any third parties a professional duty of care.

**5. Viability and Planning**

5.1 Scheme viability is normally assessed using residual valuation methodology.

5.2 A summary of the residual process is:



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- 5.3 If the RLV driven by a proposed scheme is reduced to significantly below an appropriate VBS, it follows that it is commercially unviable to pursue such a scheme, and the scheme is unlikely to proceed.
- 5.4 The RLV approach (as summarised above) can be inverted so that it becomes a 'residual profit appraisal' based upon the insertion of a specific land cost/value (equivalent to the VBS) at the top. By doing this, the focus is moved onto the level of profit driven by a scheme. This is a purely presentational alternative.
- 6. VBS (or Land Cost/Value Input, also referred to as Site Viability Benchmark Sum)**
- 6.1 The Royal Institution of Chartered Surveyors ("RICS") published their long awaited Guidance Note on this subject in 2012 (Financial Viability in Planning – RICS Guidance Note – GN 94/2012 August 2012).
- 6.2 The RICS have consulted more extensively than any other body on this subject to date and I believe that their latest guidance now represents the best possible consolidated guidance on this subject. However, due regard has also been given to the Harman guidance already referred to. The fundamental difference between the two is the approach to the VBS. Harman believes the dominant driver should be Existing Use Value ("EUV") (whereupon I believe they mean Current Use Value, or "CUV" which, based upon RICS guidance, excludes all hope value for a higher value through alternative uses). On the other hand, RICS states that the dominant driver should be Market Value (assuming that any hope value accounted for has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan).
- 6.3 A few local authorities and their advisors are still trying to disregard premiums applicable to EUVs or CUVs (i.e. EUV/CUV only - which was the basis being incorrectly enforced for several years) but the reference to 'competitive returns' in the NPPF and planning precedent has now extinguished this stance.
- 6.4 There has been concern about how one can identify and logically justify what premium should be added to an EUV or CUV and what exactly EUV means. It is not as straight-forward as one might initially think.
- 6.5 There has also been some concern about Market Value potentially being influenced by land transaction comparables and/or bids for land that are excessive (thus triggering an inappropriate benchmark). However, I believe that any implied suggestion that developers deliberately (or might deliberately) over-pay for land in order to avoid having to deliver S.106 affordable housing contributions is misguided. Land buyers and developers seek to secure land for as little money as possible. They do not seek to overpay and are aware of the associated planning and financial risks should they do so. My view is that, if professional valuers disregard inappropriate land transaction comparables (e.g. where over-payments appear to have occurred accidentally or for some other legitimate but odd reason) and other inappropriate influences in deriving Market Value, both of which they should, Market Value is on-balance the more justifiable, logical, reasonable and realistic approach – albeit not perfect.

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- 6.6 I believe that the premium over EUV or CUV to identify an appropriate VBS is in fact the same as the percentage difference between EUV or CUV and Market Value. In other words, both approaches should lead to the same number. However, Market Value is the logical side to approach this conundrum from.
- 6.7 As such, I have followed the latest RICS Guidance herein as well as recent Planning Inspectorate decisions including that by Clive Hughes BA (Hons) MA DMS MRTPI in Land at The Manor, Shinfield, Reading under Reference APP/X0360/A/12/2179141.
- 6.8 Of particular note, the RICS guidance says:
- a) Site Value either as an input into a scheme specific appraisal or as a benchmark is defined in the guidance note as follows, "Site Value should equate to the Market Value subject to the following assumption that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan."
  - b) An accepted method of valuation of development sites and land is set out in RICS Valuation Information Paper (VIP) 12. This paper is shortly to be re-written as a Global Guidance Note.
  - c) Reviewing alternative uses is very much part of the process of assessing the Market Value of land and it is not unusual to consider a range of scenarios for certain properties. Where an alternative use can be readily identified as generating a higher value, the value for this alternative use would be the Market Value.
  - d) The nature of the applicant should normally be disregarded as should benefits or dis-benefits that are unique to the applicant.
  - e) The guidance provides this definition in the context of undertaking appraisals of financial viability for the purposes of town planning decisions: *An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, whilst ensuring an appropriate site value for the landowner and a market risk adjusted return to the developer in delivering that project.*
  - f) With regard to indicative outline of what to include in a viability assessment it is up to the practitioner to submit what they believe is reasonable and appropriate in the particular circumstances and for the local authority or their advisors to agree whether this is sufficient for them to undertake an objective review.
  - g) For a development to be financially viable, any uplift from current use value to residual land value that arises when planning permission is granted must be able to meet the cost of planning obligations whilst ensuring an appropriate site value for the landowner and a market risk adjusted return to the developer in delivering that project (the NPPF refers to this as 'competitive returns' in paragraph 173 on page 41). The return to the landowner will be in the form of a land value in excess of current use value but it would be inappropriate to assume an uplift based upon set percentages, given the heterogeneity of individual development sites. The land value will be based upon market value which will be risk-adjusted, so it will normally be less than current market prices for development land for which planning permission has been secured and planning obligation requirements are known.

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- h) Sale prices of comparable development sites may provide an indication of the land value that a landowner might expect but it is important to note that, depending on the planning status of the land, the market price will include risk-adjusted expectations of the nature of the permission and associated planning obligations. If these market prices are used in the negotiations of planning obligations, then account should be taken of any expectation of planning obligations that is embedded in the market price (or valuation in the absence of a price). In many cases, relevant and up to date comparable evidence may not be available or the heterogeneity of development sites requires an approach not based on direct comparison. The importance, however, of comparable evidence cannot be over-emphasised, even if the supporting evidence is very limited, as evidenced in Court and Land Tribunal decisions.
- i) The assessment of Market Value with assumptions is not straightforward but must, by definition, be at a level which makes a landowner willing to sell, as recognised by the NPPF. Appropriate comparable evidence, even where this is limited, is important in establishing Site Value for a scheme specific as well as area wide assessments.
- j) Viability assessments will usually be dated when an application is submitted (or when a CIL charging schedule or Local Plan is published in draft). Exceptions to this may be pre-application submissions and appeals. Viability assessments may occasionally need to be updated due to market movements or if schemes are amended during the planning process.
- k) Site purchase price may or may not be material in arriving at a Site Value for the assessment of financial viability. In some circumstances the use of actual purchase price should be treated as a special case.
- l) It is for the practitioner to consider the relevance or otherwise of the actual purchase price, and whether any weight should be attached to it, having regard to the date of assessment and the Site Value definition set out in the guidance.
- m) Often in the case of development and site assembly, various interests need to be acquired or negotiated in order to be able to implement a project. These may include: buying in leases of existing occupiers or paying compensation; negotiating rights of light claims and payments; party wall agreements, over sailing rights, ransom strips/rights, agreeing arrangements with utility companies; temporary/facilitating works, etc. These are all relevant development costs that should be taken into account in viability assessments. For example, it is appropriate to include rights of light payments as it is a real cost to the developer in terms of compensation for loss of rights of light to neighbouring properties. This is often not reflected in Site Value given the different views on how a site can be developed.
- n) It is important that viability assessments be supported by adequate comparable evidence. For this reason, it is important that the appraisal is undertaken by a suitably qualified practitioner who has experience of the type, scale and complexity of the development being reviewed or in connection with appraisals supporting the formulation of core strategies in local development frameworks. This ensures that appropriate assumptions are adopted and judgement formulated in respect of inputs such as values, yields, rents, sales periods, costs, profit levels and finance rates to be assumed in the appraisal. This should be carried out by an independent practitioner and ideally a suitably qualified surveyor.

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- o) The RICS Valuation Standards 9<sup>th</sup> Edition ("Red Book") gives a definition of Market Value as follows:
- The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction after properly marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
  - The Red Book also deals with the situation where the price offered by prospective buyers generally in the market would reflect an expectation of a change in the circumstances of the property in the future. This element is often referred to as 'hope value' and should be reflected in Market Value. The Red Book provides two examples of where the hope of additional value being created or obtained in the future may impact on the Market Value:
    - the prospect of development where there is no current permission for that development; and
    - the prospect of synergistic value arising from merger with another property or interests within the same property at a future date.
  - The guidance seeks to provide further clarification in respect of the first of these by stating that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.
  - The second bullet point above is particularly relevant where sites have been assembled for a particular development.
  - It should be noted that hope value is not defined in either the Valuation Standards. That is because it is not a basis of value but more a convenient way of expressing the certainty of a valuation where value reflects development for which permission is not guaranteed to be given but if it was, it would produce a value above current use.
  - To date, in the absence of any guidance, a variety of practices have evolved which benchmark land value. One of these, used by a limited number of practitioners, has been to adopt Current Use Value ("CUV") plus a margin or a variant of this (Existing Use Value ("EUV") plus a premium). The EUV / CUV basis is discussed below. The margin is an arbitrary figure often ranging from 10% to 40% above CUV but higher percentages have been used particularly in respect of green-field and rural land development.
  - In formulating this guidance, well understood valuation definitions have been examined as contained within the Red Book. In arriving at the definition of Site Value (being Market Value with an assumption), the Working Party / Consultant Team of this guidance have had regard to other definitions such as EUV and Alternative Use Value ("AUV") in order to clarify the distinction necessary in a financial viability in a planning context. Existing Use Value is defined as follows:
    - "The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction after properly marketing and where the parties had each acted knowledgeably, prudently and without compulsion assuming that the buyer is granted vacant possession of all parts of the property

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required by the business and disregarding potential alternative uses and any other characteristics of the property that would cause Market Value to differ from that needed to replace the remaining service potential at least cost."

- It is clear the above definition is inappropriate when considered in a financial viability in planning context. EUV is used only for inclusion in financial statements prepared in accordance with UK accounting standards and as such, hypothetical in a market context. Property does not transact on an EUV (or CUV) basis.
- It follows that most practitioners have recognised and agreed that CUV does not reflect the workings of the market as land does not sell for its CUV, but rather at a price reflecting its potential for development. Whilst the use of CUV plus a margin does in effect recognise hope value by applying a percentage increase over CUV it is a very unsatisfactory methodology when compared to the Market Value approach set out in the Guidance and above. This is because it assumes land would be released for a fixed percentage above CUV that is arbitrary inconsistently applied and above all does not reflect the market.
- Accordingly, the guidance adopts the well understood definition of Market Value as the appropriate basis to assess Site Value, subject to an assumption. This is consistent with the NPPF, which acknowledges that "willing sellers" of land should receive "competitive returns". Competitive returns can only be achieved in a market context (i.e. Market Value) not one which is hypothetically based with an arbitrary mark-up applied, as in the case of EUV (or CUV) plus.
- So far as alternative use value is concerned, the Valuation Standards state where it is clear that a purchaser in the market would acquire the property for an alternative use of the land because that alternative use can be readily identified as generating a higher value than the current use, and is both commercially and legally feasible, the value for this alternative use would be the Market Value and should be reported as such. In other words, hope value is also reflected and the answer is still Market Value.

**7. The Proposed Scheme**

- 7.1 Planning permission has been granted for a scheme of 26 apartments on site. The planning consent, originally dated 18<sup>th</sup> May 2010 and superseded by SW/13/0568 dated 8<sup>th</sup> August 2013 is for "demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access". However, the consent also relates to amended drawings received 25<sup>th</sup> February 2009 and additional information received 17<sup>th</sup> February and 23<sup>rd</sup> February 2009. The amended drawings clearly show 13, two bedroom apartments and 13 one bedroom apartments. As such, it is this scheme which is the subject of the Viability Report and I assume that the wording of the consent has now been superseded by the revised drawings.
- 7.2 The proposed development is in an L-shaped block with five storey accommodation on the corner of London Road and the road into the Wickes site. The roof height then falls away to three storey accommodation. The drawings appear to show a traditional brick and block concrete frame construction, and I have hence assumed this to be the preferred method of construction.

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7.3 I have been provided with a schedule of areas which is as follows:

Unit	Floor	Bedrooms	Bathrooms	Area (sq.ft)	Area (sq.m)	Comments
1	Ground	2	1	520	48.29	Small garden
2	Ground	2	1	541	50.29	Garden
3	Ground	1	1	408	37.89	Patio
4	Ground	1	1	408	37.89	Patio
5	Ground	2	1	643	59.76	Patio
6	First	1	1	456	42.37	Over vehicular entrance
7	First	1	1	450	41.83	Over vehicular entrance
8	First	2	1	537	49.91	Balconies to front and rear
9	First	2	1	530	49.24	Corner balcony
10	First	1	1	422	39.20	Balconies to front and rear
11	First	1	1	422	39.20	Balconies to front and rear
12	First	2	1	666	61.88	Balconies to front and rear
13	Second	1	1	456	42.38	Over vehicular entrance
14	Second	1	1	450	41.83	Over vehicular entrance
15	Second	2	1	537	49.91	Balconies to front and rear
16	Second	2	1	541	50.30	Corner balcony
17	Second	1	1	422	39.20	Balconies to front and rear
18	Second	1	1	422	39.20	Balconies to front and rear
19	Second	2	1	643	59.76	Balconies to front and rear
20	Third/ Fourth	2	2	801	74.42	Private lift and balcony
21	Ground	2	1	499	46.37	Patio
22	First	2	1	499	46.37	Balconies to front and rear
23	First	1	1	460	42.71	Balcony to rear
24	First	1	1	460	42.71	Balcony to rear
25	Second	2	1	508	47.18	Large balconies to front and rear
26	Second	1	1	373	34.65	Large balcony to rear

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**8. Market Value of Existing Site (Viability Benchmark)**

8.1 I have had sight of the Title Register for the Property, which confirms the current owner purchased the site for a sum of £630,000 in 2007 at the height of the market, reflecting good prospects for development and attractive returns. Due to the fact the original planning application was submitted in 2008, I believe this purchase price is an accurate reflection of value at the time in relation to a potential residential development site. The market subsequently collapsed, with the Land Registry figures reporting a 19.2% decrease in residential values in Kent between the top of the market in December 2007 and the bottom in April 2009. The value of flats fell even greater than the average property according to the same data. This absolutely emphasises the necessity of developers allowing for a risk adjusted return due to wider market factors.

8.2 Since the purchase in 2007, the existing buildings on the site have been severely damaged by fire, which had led us to consider the subsequent impact on land value. However, the buildings were to be demolished as part of the planning application, and I would therefore argue that the value of the original development opportunity did not take the existing buildings into account.

8.3 Finally, due regard has been given to the land value of a vacant brownfield site in an urban location with clear development potential.

8.4 The conclusion reached is that the Property has an Existing Use Value or Viability Benchmark Sum, in line with the original purchase price of £630,000 against which the profit margin of the proposed scheme can be tested.

**9. Alternative Use Value (AUV) (Development Scheme)**

9.1 In looking at the market solution for the site it is not possible to carry out full appraisals of all potential development options. This report therefore examines the scheme as detailed under planning application reference SW/13/0568.

**10. Development Value Appraisal**

10.1 In order to assess the viability of the proposed scheme to bear affordable housing and 106 contributions I have constructed a development appraisal using the Argus Property Software Package, a widely used and recognised appraisal tool. The appraisal is attached as Appendix C and can be summarised as follows:

**A. Acquisition Costs** – I have inserted the 2007 purchase price of £630,000 into the appraisal, along with the historic stamp duty paid at £13,700. Other fees bring the total acquisition costs to £687,500, whilst an additional uplift of £25 psf over 10,000 sq ft was also payable at £77,000,

**B. Revenue (Gross Development Value)** – Based upon comparable evidence in the market place, the Gross Development Value is assessed at between £225 psf and £270 psf, dependent on the size of the units. Capital values therefore range from £100,000 for the smallest one-bedroom flat, to £180,000 for the largest 2-bedroom apartment. This takes into account comparable transactions in the locality as well as the particular characteristics of this site which is located on a relatively

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busy arterial road with a mixture of surrounding uses involving petrol stations and retail warehouses amongst other residential stock. The reversionary freehold interest in the land is also included at £78,000.

**B. Construction Costs** – All construction costs are based on BCIS endorsed tender priced costings rebased for Kent as at 13<sup>th</sup> May 2017. For new build flats extending to 3 storeys, this is £139 psf.

A contingency allowance has been adopted at 5% in line with standard market practice taking into account that this is a brownfield site likely to require remediation and demolition works.

**C. Other Construction Costs** – Due regard has been given to demolition and remediation works totalling approximately £58,000 in order to prepare the site for a residential led redevelopment. Also included is £19,500 to cover the warranties associated with the completed new builds, along with £30,000 as an appropriate figure for the security costs incurred since the purchase of the Property.

**D. Fees and Finance** – Along with acquisition costs and planning fees an allowance has been made for professional fees at 10% in line with industry standards along with agents and marketing fees and legal costs.

Finance rates of 6.25% have been adopted, based on interest costs and bank fees, over a total cash activity period of 15 months comprising a 12 month phased build programme and a 6 month sales programme with the last units being sold 3 months' post construction.

**E. Section 106 Costs** – At this juncture an allowance for Section 106 costs has been made as follows:

▪ Section 106 Agreement	£36,191
▪ Additional affordable housing contribution	£3,809

In total this would provide for a total Section 106 cost of £40,000.

**11. Conclusion**

11.1 The appraisal yields a profit, or developer's return, of just 0.65% on GDV. It is widely accepted that, for a scheme to be technically viable in planning terms, an acceptable return for a developer is in the range of 17.5% to 20%. On complex brownfield sites, and particularly post-Brexit, it is widely accepted that returns will be at the upper end of this spectrum going forward, certainly much closer to 20%. As alluded to previously in this Report, the profit margin is crucial for absorbing unexpected shocks in the economy, along with hidden costs on brownfield sites, and is a suitable sum commuted on the risk taken by the developer. Clearly, a return of just 0.65% is significantly below any form of acceptable margin and is absolutely not viable in planning terms.

11.2 In my opinion, this scheme is such a long way off being viable that any Section 106 payments at all simply adds to the costs and will reduce the viability further. However, as previously mentioned the developer is keen to build the scheme and exit the site and is willing to honour the previous commitment to provide a total package of £40,000 in payments, almost double the total projected profit of this scheme.

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- 11.3 Upon conclusion of this Viability Report, it is my opinion that the sum offered by the developer was in excess of what should be considered reasonable, and it would now be unrealistic to expect any offer over and above the £40,000 in Section 106 costs that is already agreed, comprising just £3,809 towards affordable housing. The developer is nevertheless prepared to commit to the additional £31,000 as put to the committee but this offer will be withdrawn if the application is again deferred or refused as this viability report clearly identifies that it cannot be justified under viability grounds.



**Tim Mitford-Slade MLE MRICS**  
Partner & Head of Development & Valuation  
Strutt & Parker LLP

8<sup>th</sup> June 2017

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# APPENDIX A

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1 \*Swale House, East Street,  
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DX59900 Sittingbourne 2  
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Fax: 01795 417141  
www.swale.gov.uk



TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568

Case no: 00744

NOTIFICATION OF GRANT OF PERMISSION TO DEVELOP LAND

TO: Clarity Properties Ltd  
C/o Mr Keith Plumb  
Woodstock Associates  
53 Woodstock Road  
Sittingbourne  
Kent  
ME10 4HJ

TAKE NOTICE that Swale Borough Council, in exercise of its powers as a Local Authority under the Town and Country Planning Acts, HAS GRANTED PERMISSION for development of land situated at:

153 London Road, Sittingbourne, Kent, ME10 1PA

and being Application to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.

referred to in your application for permission for development accepted as valid on 9<sup>th</sup> May 2013.

SUBJECT TO THE CONDITIONS specified hereunder:-

- (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.

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

- (2) The development hereby approved shall be carried out in accordance the following approved drawings:

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

YOUR ATTENTION IS DRAWN TO THE NOTES OVERLEAF FOR FURTHER INFORMATION – SEE ATTACHED SHEET



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Prior to commencement

- (3) Prior to the commencement of the development hereby approved details of the materials to be used in construction shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with those approved details.

Grounds: In the interests of visual amenity.

- (4) Prior to the commencement of the development hereby approved, a plan indicating the position, details and materials of the boundary treatments has been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed prior to the occupation of the first residential dwelling and shall thereafter be retained.

Grounds: In the interests of visual amenity.

- (5) Prior to the commencement of the development hereby approved full details of both hard and soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include proposed finish levels of contours, means of enclosure, parking layouts, hard surfacing materials, planting plans with written specifications and heights.

Grounds: In the interests of visual amenity of the area.

- (6) Prior to the commencement of the development hereby approved, the Code for Sustainable Homes registration number, a design stage certificate and confirmation of the code level that will be achieved for dwellings as indicated in the submitted application 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 unless any variation has been approved in writing by the Local Planning Authority. All dwellings within the development shall achieve a minimum of Code Level 3 of the Code for Sustainable Homes as confirmed within the submitted documents, or an equivalent rating in any subsequent replacing standard that has been agreed in writing by the Local Planning Authority.

Grounds: In the interests of promoting energy efficiency and sustainable development.

FOR FURTHER INFORMATION – SEE ATTACHED SHEET



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TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568  
Case no: 00744

(7) Prior to the commencement of the development hereby approved a contaminated land assessment (and associated remediation strategy if relevant) shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall comprise:

- i) 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.
- ii) 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.

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

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

Grounds: In the interests of visual amenity.

(9) Notwithstanding the submitted plans and prior to the commencement of development hereby approved, details of the elevations of the southern block of development and any noise attenuation measures to be provided to the building shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with those approved details.

Grounds: In the interests of amenity.

**FOR FURTHER CONDITIONS & GROUNDS – SEE ATTACHED SHEET**



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Application: SW/13/0568  
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During Construction

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

Grounds: In the interests of residential amenity.

- (11) Construction activity in association with the development herein approved shall only take place between the hours of Monday to Friday 0730 to 1900 hours and Saturdays 0730 to 1300 and no works shall take place outside of these times including on any Sunday or Bank or national holidays.

Grounds: In the interests of residential amenity

Prior to occupation

- (12) 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.

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

- (13) 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.

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

FOR FURTHER CONDITIONS & GROUNDS – SEE ATTACHED SHEET



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Application: SW/13/0568  
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TOWN AND COUNTRY PLANNING ACT 1990

- (14) All hard and soft landscaping plans shall be carried out in accordance with those approved details. The works shall be carried out prior to the occupation of the first dwelling in accordance with a programme agreed by the Local Planning Authority. The approved planting stock shall be maintained for a minimum period of five years following its planting and any of the stock that dies or is destroyed within this period shall be replanted in accordance with details to be submitted and approved by the Local Planning Authority.

Grounds: In the interests of visual amenity of the area.

- (15) No dwelling shall be occupied until space has been laid out within the site in accordance with the details shown on the application plans for cycles to be parked.

Grounds: To ensure that there is sufficient cycle parking at the site in the interests of sustainable development

On-going

- (16) The areas shown for vehicle parking shall be kept available for such a use and no development whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any Order revoking or re-enacting that Order shall be carried out on the land so as to preclude vehicular access and parking.

Grounds: In the interests of amenity and to prevent on-street parking and inconvenience to other road users.

FOR FURTHER INFORMATION – SEE ATTACHED SHEET



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TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568  
Case no: 00744

**Council's approach to this application**

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

In this case the application was acceptable as submitted.

PLEASE ALSO NOTE THAT THERE IS AN AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO THIS DEVELOPMENT

8<sup>th</sup> August 2013  
Dated: .....

James Freeman  
Head of Planning



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# APPENDIX B

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South East Valuations and Development &amp; Planning



# Viability in Planning

## The Appropriate Level of Developers Profit in Viability Appraisals

November 2016

### Introduction

Viability assessments are considered a crucial tool in assisting with the development of plans and planning policy, and have become ever more ingrained in the planning process since the introduction of the National Planning Policy Framework in 2012. As a result, Strutt & Parker are often instructed by clients to produce viability appraisals, of which an important element is the regularly disputed developer's profit. In paragraph 015 of the NPPF it is stated that viability should consider "competitive returns to a willing landowner and willing developer to enable the development to be deliverable". After extensive market research, Strutt & Parker adopted a 20% profit on Gross Development Value (GDV) for use in our viability appraisals, and this paper briefly summarised some of the evidence used to reach that conclusion.

### Executive Summary

- RICS guidance dictates that for a scheme to be viable, a developer's return cannot fall below the level which is acceptable in the market for the risks involved in undertaking a scheme of that nature.
- Without viability assessments, it is conceivable that approximately half of major developments in the UK would not take place.
- Strutt & Parker use a developer's profit of 20% GDV as a cost in Residual Land Valuations when assessing whether or not a scheme is viable.
- There is evidence across the industry which supports a developer's profit of 20% on GDV being used in viability appraisals from House Builders, Local Planning Authorities, Appeal Cases and Surveying Firms.
- Strutt & Parker conclude that a developer's profit of 20% on GDV is a figure reflective of attitudes towards risk, is aligned with current market expectations and is supported by research from across the industry.

### Viability Appraisals

Guidance for the application for developer's profits in viability appraisals is outlined in Section 3.3 of the RICS Professional Guidance Note titled *Financial Viability in Planning* and is as follows:

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*“3.3.1 When a developer’s return is adopted as the benchmark variable, a scheme should be considered viable, as long as the cost implications of planning obligations are not set at a level at which the developer’s return (after allowing for all development costs including Site Value) falls below that which is acceptable in the market for the risk in undertaking the development scheme. If the cost implications of the obligations erode a developer’s return below an acceptable market level for the scheme being assessed, the extent of those obligations will be deemed to make a development unviable as the developer would not proceed on that basis.*”

*3.3.2 The benchmark return, which is reflected in a developer’s profit allowance, should be at a level reflective of the market at the time of the assessment being undertaken. It will include the risks attached to the specific scheme. This will include both property-specific risk, i.e. the direct development risks within the scheme being considered, and also broader market risk issues, such as the strength of the economy and occupational demand, the level of rents and capital values, the level of interest rates and availability of finance. The level of profit required will vary from scheme to scheme, given different risk profiles as well as the stage in the economic cycle. For example, a small scheme constructed over a shorter timeframe may be considered relatively less risky and therefore attract a lower profit margin, given the exit position is more certain, than a large redevelopment spanning a number of years where the outturn is considerably more uncertain. A development project will only be considered economically viable if a market risk adjusted return is met or exceeds a benchmark risk-adjusted market return.”*

### **Importance in Planning**

There are several planning obligations imposed on developers by Local Authorities which include s106, s106BC (affordable housing) and CIL among others. Viability assessments play a crucial role in ensuring these obligations are not set at a level which would make the scheme unviable for the developer, and are often the basis for negotiations with the Council. According to official Government Planning Inspectorate Statistics<sup>1</sup>, 43% of s106 Planning Obligations Appeals were allowed in 2015/2016 across the UK, with 44% of s106BC Appeals also allowed. These figures peaked in 2014/15 when 59% of s106 Planning Obligations appeals were allowed throughout the UK. This demonstrates that without these appeals, which are often supported by viability assessments, approximately half of the proposed major development in the UK would potentially fail to take place. Due to the importance of these assessments in taking development forward, there is huge scrutiny placed on the inputs which form the basis of the viability appraisals.

### **Industry Commentary**

To reach our adopted input of 20% developer’s returns on GDV, Strutt & Parker gathered extensive market commentary on the topic. This includes (but is not limited to) the opinions of industry experts, planners, house builders, planning law and official appeal cases. Some of these are included as follows:

<sup>1</sup> Online at <https://www.gov.uk/government/statistics/planning-inspectorate-statistics>

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### RICS Research

The RICS *Financial Viability Appraisal in Planning Decisions: Theory and Practice* paper researched viability and stated “*there is no evidence ... that there is a generally accepted level of profit from development*”. This is in line with the NPPF Para 024, which discourages a set figure in order to reflect current market conditions – “*A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible*”. However, the report does go on to cite the Land at the Manor, Shinfield case as evidence of an appeal which explores the relevant level of developer profit to be used in viability appraisals. Recognition by the RICS makes the Shinfield case a key reference for this topic.

### Land at the Manor, Shinfield

The Inspector’s decision relating to Land at the Manor, Shinfield, deemed that a “*reasonable*” competitive return to the developer was a 20% margin on the GDV of both market and affordable housing. This was based on evidence provided by developers – “*the national house builder’s figures are to be preferred and that is a figure of 20% of GDV*”.

### Barratt Homes

Barratt Homes outlined their policy for including profit in their appraisals during a presentation titled “*Assessing Viability – A House Builders Perspective*” given by Philip Barnes. They stated that a 20% profit on GDV is used in their appraisals mainly to protect in the event of costs overrunning, and to avoid investors abandoning the company if there is a repeat of the pre-2007 irresponsible land buying. The evidence they used to justify their 20% figure during the presentation is as follows:

- “*My experience is that bankers will not provide funding with a profit of less than 20% of GDV*” – Planning Inspectorate Review of Stockton EVA, here discussing the levels of developer returns in Para 2.10.2.
- In the *Viability Study BNP Paribas – London Borough of Brent*, it is noted how developer profits ranged from 15% to 17% of GDV in 2007 before the financial crisis. BNP use this as their foundation to explain how “*banks currently require a scheme to show higher profits*” to “*reflect perceived and actual risk*” (Para 3.19). Consequently Barratt argue a return of 20% on GDV is their minimum profit requirement as they do not believe banks will support the scheme otherwise.

Barratt also put emphasis on their presentation in how profit should be calculated as a % of GDV, not costs. To justify this, they refer to the Harman Report which references Page 37 of *Viability Testing Local Plans – Advice for Planning Practitioners*. Here it states “*developer margin expressed as percentage of GDV should be default methodology, with alternative modelling techniques used as the exception*”, although it gives no indication of what level of profit should be applied.

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#### Indications from Local Authorities

There is a common perception that developers and Local Planning Authorities are divided over the assumptions which should be used in a viability appraisal. However, there are several examples of LPA's both in London and the UK Regions citing 20% of GDV as a reasonable level of developer's profit, some of which are as follows:

- On 20<sup>th</sup> April 2015 Ashford Borough Council held a developer's workshop as part of their *Plan and CIL Viability Review*, which Strutt & Parker attended. In point 10 of their Viability Presentation, ABC included a 20% developer return on GDV in their Build Costs schedule in their example of a suitable Residual Value Approach.
- The London Borough of Barking references a 20% profit on GDV for developers on Page 16 of their EVA Affordable Housing and CIL publication.
- The Examiner's Report (July 2012) for the Bristol City Council Draft CIL Charging Schedule noted that "using an average figure of 20% [profit] across the city is not unreasonable or unrealistic".

#### Savills

Savills Research published a report in 2014 titled *CIL - Getting It Right*, in which they outlined the viability appraisal assumptions applied by the company's surveyors on Page 6. Savills apply a standard set of assumptions in their residual appraisals, amongst which "the appraisal should allow for a competitive return to the developer". For this return, they use a "20% margin on GDV across all tenures, in line with evidence that this is a minimum requirement across the cycle". This is a good indication that surveyors across the industry are using the same profit assumptions in their viability appraisals.

#### **Conclusion**

We realise that the level of required profit margins in viability assessments will continue to be disputed throughout the industry. However, we are confident that the market research included in this paper has given us a strong foundation to form our opinion of 20% profit on GDV as a suitable input for developer's returns. This figure is reflective of current attitudes towards risk and lending, is aligned with current market expectations and is firmly supported by research from across the industry.

#### **Prepared by:**

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South East Valuations and Development & Planning  
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# APPENDIX C

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**Strutt & Parker LLP**

Development Appraisal

153-155 London Road Sittingbourne

Viability Appraisal for Swale Borough Council

SW/13/0568

Report Date: 21 June 2017

Prepared by Tim Mitford-Slade MLE MRICS

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**APPRAISAL SUMMARY** **STRUTT & PARKER LLP**

153-155 London Road Sittingbourne  
Viability Appraisal for Swale Borough Council

**Summary Appraisal for Phase 1**

Currency in £

**REVENUE**

Sales Valuation	Units	ft <sup>2</sup>	Rate ft <sup>2</sup>	Unit Price	Gross Sales
Flat 1 GF 2 bed 520 sq ft	1	520	250.00	130,000	130,000
Flat 2 GF 2 bed 541 sq ft	1	541	249.54	135,000	135,000
Flat 3 GF 1 bed 408 sq ft	1	408	257.35	105,000	105,000
Flat 4 GF 1 bed 408 sq ft	1	408	257.35	105,000	105,000
Flat 5 GF 2 bed 643 sq ft	1	643	241.06	155,000	155,000
Flat 6 FF 1 bed 456 sq ft	1	456	252.19	115,000	115,000
Flat 7 FF 1 bed 450 sq ft	1	450	255.56	115,000	115,000
Flat 8 FF 2 bed 537 sq ft	1	537	246.74	132,500	132,500
Flat 9 FF 2 bed 530 sq ft	1	530	245.28	130,000	130,000
Flat 10 FF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 11 FF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 12 FF 2 bed 666 sq ft	1	666	240.24	160,000	160,000
Flat 13 SF 1 bed 456 sq ft	1	456	252.19	115,000	115,000
Flat 14 SS 1 bed 450 sq ft	1	450	255.56	115,000	115,000
Flat 15 SF 2 bed 537 sq ft	1	537	246.74	132,500	132,500
Flat 16 SF 2 bed 541 sq ft	1	541	249.54	135,000	135,000
Flat 17 SF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 18 SF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 19 SF 2 bed 643 sq ft	1	643	241.06	155,000	155,000
Flat 20 Pent 2 bed 801 sq ft	1	801	224.72	180,000	180,000
Flat 21 GF 2 bed 499 sq ft	1	499	250.50	125,000	125,000
Flat 22 FF 2 bed 499 sq ft	1	499	250.50	125,000	125,000
Flat 23 FF 1 bed 460 sq ft	1	460	250.00	115,000	115,000
Flat 24 FF 1 bed 460 sq ft	1	460	250.00	115,000	115,000
Flat 25 SF 2 bed 508 sq ft	1	508	246.06	125,000	125,000
Flat 26 SF 1 bed 373 sq ft	1	373	268.10	100,000	100,000
Rev Freehold Interest	1	0	0.00	78,000	78,000
<b>Totals</b>	<b>27</b>	<b>13,074</b>			<b>3,338,000</b>

**NET REALISATION**

**3,338,000**

**OUTLAY**

**ACQUISITION COSTS**

Fixed Price			630,000	
Stamp Duty			13,700	
Agent Fee		1.00%	6,300	
Legal Fee		0.75%	4,725	
Town Planning	28 un	1,000.00 /un	28,000	
Survey			5,000	
				687,725

**Other Acquisition**

Uplift of £25 psf over 10,000 sq ft			76,850	
				76,850

**CONSTRUCTION COSTS**

Construction	ft <sup>2</sup>	Rate ft <sup>2</sup>	Cost
Flat 1 GF 2 bed 520 sq ft	520 ft <sup>2</sup>	139.00 pF	72,280
Flat 2 GF 2 bed 541 sq ft	541 ft <sup>2</sup>	139.00 pF	75,199
Flat 3 GF 1 bed 408 sq ft	408 ft <sup>2</sup>	139.00 pF	56,712
Flat 4 GF 1 bed 408 sq ft	408 ft <sup>2</sup>	139.00 pF	56,712
Flat 5 GF 2 bed 643 sq ft	643 ft <sup>2</sup>	139.00 pF	89,377
Flat 6 FF 1 bed 456 sq ft	456 ft <sup>2</sup>	139.00 pF	63,384
Flat 7 FF 1 bed 450 sq ft	450 ft <sup>2</sup>	139.00 pF	62,550
Flat 8 FF 2 bed 537 sq ft	537 ft <sup>2</sup>	139.00 pF	74,643
Flat 9 FF 2 bed 530 sq ft	530 ft <sup>2</sup>	139.00 pF	73,670
Flat 10 FF 1 bed 422 sq ft	422 ft <sup>2</sup>	139.00 pF	58,658

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<b>APPRAISAL SUMMARY</b>	<b>STRUTT &amp; PARKER LLP</b>		
<b>153-155 London Road Sittingbourne</b>			
<b>Viability Appraisal for Swale Borough Council</b>			
Flat 11 FF 1 bed 422 sq ft	422 ft²	139.00 pF	58,658
Flat 12 FF 2 bed 666 sq ft	666 ft²	139.00 pF	92,574
Flat 13 SF 1 bed 456 sq ft	456 ft²	139.00 pF	63,384
Flat 14 SS 1 bed 450 sq ft	450 ft²	139.00 pF	62,550
Flat 15 SF 2 bed 537 sq ft	537 ft²	139.00 pF	74,643
Flat 16 SF 2 bed 541 sq ft	541 ft²	139.00 pF	75,199
Flat 17 SF 1 bed 422 sq ft	422 ft²	139.00 pF	58,658
Flat 18 SF 1 bed 422 sq ft	422 ft²	139.00 pF	58,658
Flat 19 SF 2 bed 643 sq ft	643 ft²	139.00 pF	89,377
Flat 20 Pent 2 bed 801 sq ft	801 ft²	139.00 pF	111,339
Flat 21 GF 2 bed 499 sq ft	499 ft²	139.00 pF	69,361
Flat 22 FF 2 bed 499 sq ft	499 ft²	139.00 pF	69,361
Flat 23 FF 1 bed 460 sq ft	460 ft²	139.00 pF	63,940
Flat 24 FF 1 bed 460 sq ft	460 ft²	139.00 pF	63,940
Flat 25 SF 2 bed 508 sq ft	508 ft²	139.00 pF	70,612
Flat 26 SF 1 bed 373 sq ft	373 ft²	139.00 pF	51,847
Communal Areas	<u>1,950 ft²</u>	56.00 pF	<u>109,200</u>
<b>Totals</b>	<b>15,024 ft²</b>		<b>1,926,486</b>
Contingency		5.00%	96,324
Demolition			28,000
Section 106			36,191
			<b>160,515</b>
<b>Other Construction</b>			
NHBC Warranties	26 un	750.00 /un	19,500
Commuted Sum			3,809
Remediation Contingency			20,000
Site Security Costs			30,000
			<b>73,309</b>
<b>PROFESSIONAL FEES</b>			
Prof Fees		10.00%	192,649
			<b>192,649</b>
<b>MARKETING &amp; LETTING</b>			
Marketing		1.00%	32,600
			<b>32,600</b>
<b>DISPOSAL FEES</b>			
Sales Agent Fee		1.25%	41,725
Sales Legal Fee		0.75%	25,035
			<b>66,760</b>
<b>FINANCE</b>			
Debit Rate 6.250% Credit Rate 1.250% (Nominal)			
Land			42,815
Construction			49,141
Other			7,533
Total Finance Cost			<b>99,489</b>
<b>TOTAL COSTS</b>			<b>3,316,383</b>
<b>PROFIT</b>			<b>21,617</b>
<b>Performance Measures</b>			
Profit on Cost%		0.65%	
Profit on GDV%		0.65%	
Profit on NDV%		0.65%	
IRR		6.63%	
Profit Erosion (finance rate 6.250%)		0 yrs 1 mths	

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**TIMESCALE AND PHASING GRAPH REPORT** **STRUTT & PARKER LLP**

153-155 London Road Sittingbourne  
Viability Appraisal for Swale Borough Council

**Project Timescale Summary**

Project Start Date	Jun 2017
Project End Date	Aug 2018
Project Duration (Inc Exit Period)	15 months

Phase Phase 1



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## **SWALE BOROUGH COUNCIL**

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153 - 155 London Road, Sittingbourne

### **Viability Assessment**

August 2017

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**CBRE**

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The logo for CBRE, consisting of the letters 'CBRE' in a bold, green, sans-serif font.

## 1.0 Introduction

- 1.1 CBRE has been appointed by Swale Borough Council (SBC) to provide viability advice in relation to the proposed residential development at 153 – 155 London Road, Sittingbourne. Clarity Properties Limited is the applicant and SBC is the Local Planning Authority. Strutt and Parker LLP is providing viability advice to Clarity Property Limited (the applicant) as part of the process.
- 1.2 CBRE is providing specialist viability advice to SBC relating to the proposed development at London Road by interrogating the issues associated with the viability of the scheme and by reviewing the development appraisals and supporting information submitted by the applicant.
- 1.3 The intention of CBRE's review is to analyse and critically appraise the appropriate level of affordable housing provision that the scheme can withstand when taking into account what is considered 'viable'. CBRE will critically evaluate the applicant's assertion that the development is suffering in terms of viability and cannot support any further contribution to affordable housing above the commuted sum already allowed for.
- 1.4 We understand the site currently benefits from a detailed planning consent (which includes a signed S106 agreement) and was granted on 8<sup>th</sup> August 2013 (planning reference SW/13/0568). The applicant submitted a modification to the S106 agreement which went to Planning Committee on 2<sup>nd</sup> February 2017, proposing the removal of on-site affordable housing, with a viability review on occupation of the 21<sup>st</sup> unit and a commuted sum payable at a minimum of £31,000. The S106 agreement allows for contributions totalling £36,191, the applicant has offered an additional £3,809 as a commuted sum towards off-site affordable housing. We understand the additional £3,809 has not yet been agreed by SBC.
- 1.5 SBC's policy requires 10% affordable housing provision within Sittingbourne with the tenure split being 90% rented and 10% shared ownership as set out in the recently adopted Local Plan 'Bearing Fruits 2031'.
- 1.6 CBRE's approach is based on undertaking a 'toolkit' development appraisal based on industry best practice<sup>1</sup> and considering whether there is a need for SBC to consider a reduction in its requirements (affordable housing and/or S106 obligations).
- 1.7 CBRE has had regard to the following reports and information in undertaking this report comprising:
  - Viability Report as prepared by Strutt and Parker LLP on behalf of the applicant dated June 2017; and
  - Development Appraisals prepared by Strutt and Parker LLP dated June 2017 appended to the applicant's Viability Report.
- 1.8 There has been an exchange of emails with Strutt and Parker to clarify some of the assumptions and inputs to the model.
- 1.9 Viability is at the heart of the delivery of development and this principle is embodied in the 2012 National Planning Policy Framework. This report therefore analyses and presents the viability issues affecting this site leading to a recommendation as to the appropriate affordable housing provision and level of S106 contributions that the scheme can support.

<sup>1</sup> Viability Testing Local Plans, Advice for Planning Practitioners – Local Housing Delivery Group Chaired by Sir John Harman, June 2012

RICS Professional Guidance England – Financial Viability in Planning 1st Edition (GN 94/2012)

## 2.0 The Site

- 2.1 The site comprises a cleared brownfield site circa 1.6 km (1 mile) to the west of Sittingbourne town centre, on the southern side of London Road (A2). Access to the A249 is within 1.6 km (1 mile) to the west of the site which provides direct access to the M2 motorway at Junction 5. Sittingbourne railway station is 1.4 km (0.9 mile) to the east of the site, providing services to London Victoria and London St Pancras International as well as local connections.
- 2.2 The whole site extends to approximately 0.14 ha (0.35 acres) and we understand from the applicant's design and access statement that the site is roughly rectangular in shape. It formerly consisted of a derelict office building which had been subject to fire damage and a number of lock-up garages. These buildings have now been cleared. We understand from the applicant's viability assessment that the site has previously been occupied by Berpul Chemical Products operating as a fertiliser factory. We have not undertaken a site visit.
- 2.3 The site boundaries comprise London Road to the North; the access road (unnamed) to the Wickes store to the east; the rear of the Wickes store to the south; and a neighbouring property to the west.
- 2.4 A site plan is attached at Appendix 1.
- 2.5 The original access to the property which was taken off London Road has been stopped up and a new access has been created to the east of the site, off the newly adopted road to the Wickes DIY Store. Wickes have provided some additional land, including six car parking spaces and the area of the site has therefore been marginally extended to the east since it was purchased by the applicant. A plan showing the additional land shaded in purple is provided at Appendix 2. The applicant has not confirmed whether the 0.14 ha (0.35 acres) quoted above includes these two additional small parcels of land.
- 2.6 The immediate surrounding uses are largely residential, as well as a number of commercial uses, including a Wickes DIY Store to the south of the site and various local amenities along London Road, including a convenience store, petrol station, public house, take-away and hotel. Westlands Secondary School, Ely Court Nursing home and Lyndhurst Nursery are also located in close proximity to the site.

### SITE AND PLANNING HISTORY

- 2.7 As referred to in the introductory section of the report, the site benefits from a detailed planning consent for the site by virtue of application reference SW/08/1124 which comprised 'demolition of existing buildings and redevelopment of the site to provide 12 no. two bedroom apartments, 14 no. one bedroom apartments, amenity space, 26 no. car parking spaces and cycle store along with a new vehicular access.'
- 2.8 Application SW/08/1124 was accompanied by a S106 Agreement which required the following items:
  - Education contribution of £589.95 per two bedroomed flat;
  - Library contribution of £227 per dwelling;
  - Adult education contribution of £180 per dwelling;
  - Open space contribution of £17,940; and
  - 30% of the residential units to be affordable.
- 2.9 An application was then submitted and approved on 8<sup>th</sup> August 2013 to 'replace an extant permission SW/08/1124 in order to extend the time limit for implementation'. The notification of the grant of permission again referred to the S106 Agreement relating to this development.

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- 2.10 A modification of the S106 Agreement was submitted and was presented to planning committee on 2<sup>nd</sup> February 2017. The application proposed that the obligation to provide on-site affordable housing was removed and a viability assessment would be submitted upon the occupation of the 21<sup>st</sup> dwelling and a commuted sum payable at a minimum of £31,000 for off-site affordable housing. We understand the chairman moved the officer recommendation to approve and this was seconded. The resolution however referred to a deferring of the application to allow officers to advise the developer to provide affordable housing on site or to improve the offer of £31,000 at the viability review.
- 2.11 We understand that S106 contributions are otherwise agreed at £36,191. The applicant has offered an additional £3,809 contribution to affordable housing via a commuted sum in lieu of on-site provision. The commuted sum (minimum £31,000) to be assessed at a viability review after the occupation of the 21<sup>st</sup> unit is in addition to the £36,191 (plus potentially an additional £3,809 totalling £40,000) agreed figure.

**DEVELOPMENT PROPOSALS**

- 2.12 The scheme put forward by the applicant proposes 26 no. apartments, comprising 12 no. two bedroom apartments and 14 no. one bedroom apartments. These proposals are as per the original planning consent (SW/08/1124) and superseded consent (SW/13/0568). However, the consent also relates to amended drawings which were received on 25th February 2009 and additional information received on 17th and 23rd February 2009 which show 13 no. two bedroom apartments and 13 no. one bedroom apartments. Therefore, the applicant has assumed the wording of the consent has now been superseded by the revised drawings and has assumed this unit mix as a basis for their Viability Report.
- 2.13 We have set out the applicant's accommodation schedule in the table overleaf (Table 1), assuming a nil affordable housing contribution.

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**Table 1: Accommodation Schedule and Floor Areas**

FLAT NO/LOCATION	TYPE	FLOOR AREA (M <sup>2</sup> )
Flat 1 Ground Floor	2 bedroom	48 sq m (520 sq ft)
Flat 2 Ground Floor	2 bedroom	50 sq m (541 sq ft)
Flat 3 Ground Floor	1 bedroom	38 sq m (408 sq ft)
Flat 4 Ground Floor	1 bedroom	38 sq m (408 sq ft)
Flat 5 Ground Floor	2 bedroom	60 sq m (643 sq ft)
Flat 6 First Floor	1 bedroom	42.4 sq m (456 sq ft)
Flat 7 First Floor	1 bedroom	41.8 sq m (450 sq ft)
Flat 8 First Floor	2 bedroom	50 sq m (537 sq ft)
Flat 9 First Floor	2 bedroom	49 sq m (530 sq ft)
Flat 10 First Floor	1 bedroom	39 sq m (422 sq ft)
Flat 11 First Floor	1 bedroom	39 sq m (422 sq ft)
Flat 12 First Floor	2 bedroom	62 sq m (666 sq ft)
Flat 13 Second Floor	1 bedroom	42.4 sq m (456 sq ft)
Flat 14 Second Floor	1 bedroom	41.8 sq m (450 sq ft)
Flat 15 Second Floor	2 bedroom	50 sq m (537 sq ft)
Flat 16 Second Floor	2 bedroom	50 sq m (541 sq ft)
Flat 17 Second Floor	1 bedroom	39 sq m (422 sq ft)
Flat 18 Second Floor	1 bedroom	39 sq m (422 sq ft)
Flat 19 Second Floor	2 bedroom	60 sq m (643 sq ft)
Flat 20 Penthouse	2 bedroom	74 sq m (801 sq ft)
Flat 21 Ground Floor	2 bedroom	46 sq m (499 sq ft)
Flat 22 First Floor	2 bedroom	46 sq m (499 sq ft)
Flat 23 First Floor	1 bedroom	43 sq m (460 sq ft)
Flat 24 First Floor	1 bedroom	43 sq m (460 sq ft)
Flat 25 Second Floor	2 bedroom	47 sq m (508 sq ft)
Flat 26 Second Floor	1 bedroom	35 sq m (373 sq ft)
<b>Total</b>	<b>26 units</b>	<b>1,214.6 sq m (13,074 sq ft)</b>

Source: *Strutt and Parker LLP, June 2017*

### 3.0 Key Viability Issues

- 3.1 The purpose of the instruction is to examine the applicant’s concerns as presented to SBC in relation to the viability of the development. The applicant has suggested that the development is currently suffering in terms of viability and therefore cannot viably support any on-site affordable housing provision in addition to S106 contributions of £40,000.
- 3.2 CBRE has reviewed the applicant’s Viability Report and appraisal dated June 2017 as prepared by Strutt and Parker LLP, as well as additional supporting information.
- 3.3 The applicant’s appraisal assumes a nil on-site affordable housing contribution, but does include a S106 contribution of £40,000, part of which (circa £ 3,809) is allocated for an affordable housing commuted sum payment. The applicant’s appraisal does not allow payment of the minimum sum of £31,000 at the viability review.
- 3.4 The applicant’s appraisal produces the following results:

**Table 2: Applicant’s Appraisal Outcomes**

SCENARIO	GROSS DEVELOPMENT VALUE (GDV)	TOTAL DEVELOPMENT COST (TDC) EXCLUDING LAND COST	FIXED LAND VALUE (INCLUSIVE OF SDLT/FEES)	RESIDUAL PROFIT
0% affordable housing (£40,000 S106 contribution)	£3,338,000	£2,666,383	£650,000	£21,617

Source: *Strutt and Parker LLP, 2017*

- 3.5 The applicant suggests that the development is suffering in viability terms as the outturn residual profit level is significantly below current market expectations. As such the development does not produce a reasonable profit level to incentivise the applicant to deliver the development as proposed. The appraisal does however include the historic site purchase price which reflects the acquisition costs of the site as incurred by the applicant in 2007.
- 3.6 The viability issues to highlight within the applicant’s appraisal largely relate to the following:
  - inclusion of the historic purchase price by the applicant which is £630,000 (net of SDLT and fees), equating to £4.45 million per gross ha (£1.8 million per gross acre);
  - the phasing of the historic purchase price as a month one cost in the cashflow;
  - cost related to an additional overage payment of £76,850 given the development will be delivering over 10,000 sq ft;
  - the base build costs;
  - the sales values adopted by the applicant;
  - the applicant’s development appraisal includes minimal abnormal costs (circa £48,000) given the previous use of the site.
- 3.7 The outcome of the applicant’s appraisal and Viability Report is demonstrating that the scheme is unviable given that it produces a marginal developer’s profit.
- 3.8 The applicant’s Viability Report concludes by stating that the S106 offered by the applicant is in excess of what should be considered reasonable and it would be unrealistic to expect any offer over and above the £40,000 in S106 contributions, which comprises £3,809 towards affordable housing (yet to be agreed by SBC).



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- 3.9 The Viability Report states, however, that the applicant is willing to proceed on the basis of a nil on-site affordable housing provision and a £40,000 S106 contribution as well as committing to the additional minimum sum of £31,000 (at the viability review) as put to the committee. They do state that the offer will be withdrawn if the application is again deferred or refused.

## 4.0 Development Appraisal Assumptions and Methodology

- 4.1 We have been provided with information from the applicant in relation to key cost and value assumptions, including build costs, sales values and sales rates. This is in the form of a Viability Report (June 2017) and development appraisals prepared by Strutt and Parker LLP.
- 4.2 We have also liaised with Strutt and Parker to clarify some assumptions and inputs into the model. Further information has been provided in an email dated 28th July 2017.
- 4.3 CBRE has undertaken a 'toolkit' residual based development appraisal (prepared in Argus Developer) using a combination of information provided by the applicant (independently verified by CBRE); CBRE assumptions where these differ from the applicant's; industry standard assumptions; and inputs which relate to SBC's assumptions (i.e. S106 contributions).
- 4.4 This methodology has allowed us to test the assumptions, inputs and calculations and assess the overall viability of the development. The Argus model is an industry standard development appraisal tool that utilises a residual development appraisal cashflow model as its basis. The outcome of the appraisal is a residual land value (or profit level) which can then be compared to benchmark land values in the area (or market appropriate profit levels) to establish the overall viability of the scheme.
- 4.5 We have tested a baseline scenario assuming:
  - no affordable housing on site
  - S106 contributions of £40,000 (we have not included the £31,000 minimum payment at the viability review)
  - the unit mix as set out by the applicant in Table 1 Accommodation Schedule in the previous section
  - a fixed profit on GDV of 18.5%
  - the outturn of the appraisal is a Residual Land Value (RLV), which can then be compared to a benchmark land value based on the site and its location.

### COST ASSUMPTIONS

#### Build Costs

- 4.6 The total base build cost adopted by the applicant is £1,926,486 equating to an overall rate of £1,380 per sq m (£128.23 per sq ft). This sum excludes external works, contingency allowance and professional fees.
- 4.7 The base build cost has been estimated by the applicant using the current RICS Building Cost Information Service (BCIS) costs (using 'mean' figures) for flats (3-5 storey) rebased to Kent. These costs have been taken as at 13th May 2017 and relate to the default period. BCIS includes preliminaries, but does not include external works and contingencies. Mean build costs for flats (3-5 storeys) equate to £1,499 per sq m (£139.26 per sq ft).
- 4.8 The applicant has then allowed for circulation space at 181 sq m (1,950 sq ft) and applied a much lower build cost of £603 per sq m (£56 per sq ft). The applicant has not explained how they have arrived at this assumption.
- 4.9 CBRE believes the use of BCIS to calculate the base build costs for the purpose of the viability assessment to be reasonable. However, we have rebased the calculation to Swale rather than Kent. We have utilised median costs for three to five storey apartments.

- 4.10 CBRE has therefore adopted median BCIS costs dated 19th August 2017 (rebased to Swale) over the default period which equate to £1,344 per sq m (£125 per sq ft). We have applied these costs to the net area of 1,215 sq m (13,074 sq ft).
- 4.11 We have also allowed for circulation space at 181 sq m (1,950 sq ft) but applied our build cost of £1,344 per sq m (£125 per sq ft).
- 4.12 CBRE's total base build cost equates to a capital cost of circa £1.878 million, compared to the applicant's total base build cost of £1.93 million.

**Other Development Costs**

- 4.13 The applicant has adopted a development contingency of 5% which is applied to the base build costs only. This equates to a total of £96,324. CBRE considers this to be at the top end of the range expected which is generally anticipated to be between 3% and 5%. However given the scheme comprises a brownfield site with a number of abnormal costs and risks attaching, CBRE has also adopted a development contingency of 5% and applied this to standard build costs which equates to £93,900.
- 4.14 The applicant has adopted professional fees at 10% (£192,649) and has applied these to all base build costs only. In CBRE's opinion this is considered to be in the range expected, which is generally anticipated between 8% and 10%. Once again given the scheme comprises a brownfield site with a number of risks attaching, CBRE has adopted the 10% allowance and has applied these to base build costs and externals which equates to £197,190.
- 4.15 The applicant has not included any allowance to cover external works (i.e. internal estate roads, car parking, landscaping etc). CBRE has therefore allowed 5% of base build costs given the development is an apartment led scheme and the site is relatively small and therefore estate roads and landscaping should be kept to a minimum. This cost equates to £87,173.
- 4.16 The applicant has also allowed for the following costs within their development appraisal:
  - Town planning - £1,000 per unit based on 28 units = £28,000;
  - Survey = £5,000;
  - NHBC warranties - £750 per units based on 26 units = £19,500
  - Site security costs = £30,000
  - Total = £82,500
- 4.17 The applicant has not provided any supporting information to justify these costs. They have stated that security costs relate to costs incurred since they purchased the property in 2007. Given our experience of undertaking development appraisals elsewhere they are considered reasonable and we have adopted these in our appraisal. However, we have adopted a slightly lower town planning fee based on 26 units rather than 28. CBRE's total cost therefore equates to £80,500.
- 4.18 The applicant has not included any costs associated with the access to the site which is taken from the new access road for Wickes. They also haven't included any costs associated with the additional two parcels of land that they have obtained since their initial acquisition. We consider that these would be reasonable costs to include (subject to verification), but have not included any costs given the applicant has not included costs associated with these items and they would be difficult for CBRE to estimate.



**Abnormal and Infrastructure Costs**

- 4.19 The applicant has included other construction costs which have been applied as additional costs over and above the standard BCIS construction costs outlined above. These relate to site specific abnormal costs and comprise demolition at £28,000 and remediation contingency at £20,000. We assume the remediation contingency was in the absence of a ground investigation given at the time of the submission of the applicant’s Viability Report. Given the previous use of the site we consider these costs to be reasonable. However, given the building has now been demolished and site surveys can now be undertaken the applicant should have a more accurate idea of the costs of demolition (as it has now been completed) and remediation and these costs could be reviewed in the light of up to date information.

**S106 Costs**

- 4.20 The applicant’s appraisal includes S106 costs equating to £40,000, of which £36,191 is included to cover the S106 contributions allowed for in the S106 Agreement. The applicant has included an additional £3,809 as a commuted sum in lieu of on-site provision. CBRE has adopted these costs within our development appraisal.
- 4.21 In addition, the applicant has confirmed that they are willing to agree to an additional minimum payment of £31,000 following a viability review on occupation of the 21st unit. This cost is not allowed for in the current appraisal. We assume that this £31,000 is a guaranteed payment, but may be increased, should the viability of the scheme improve. We comment in the following section on the basis of the viability review.

**Profit, Marketing and Other Assumptions**

- 4.22 The applicant has adopted fees and marketing costs of 3% of market GDV, consisting of 1% marketing costs; 1.25% sales agency fees and 0.75% sales legal fees, which equates to £99,360. CBRE has adopted the applicant’s marketing fees despite this being on the low side, however we have adopted sales agent fees of 1% and sales legal fees of 0.5% given our experience of undertaking viability assessments elsewhere. This equates to a cost of £84,316.
- 4.23 The applicant has adopted the approach of residualising their profit in favour of adopting a fixed land value for the site. The applicant’s residual profit equates to £21,617 (0.65% on gross development value (GDV)). CBRE has approached it based on adopting a fixed profit level and residualising the land value. We have therefore calculated profit at 18.5% of market housing GDV, which equates to a capital cost of £628,156. This is below current market expectations and our experience of undertaking viability assessments elsewhere, which are closer to 20% profit on market GDV, particularly on brownfield sites, given the additional risks to the developer. However, the applicant has stated within their Viability Report that profit levels should be between 17.5% and 20% on market GDV and therefore we have decided to adopt a profit level of circa 18.5% which represents an average figure given the range quoted by the applicant and we believe is entirely reasonable given our experience elsewhere which suggests a higher profit margin could be applicable.
- 4.24 Interest has been calculated by the applicant at a debit rate of 6.25% per annum with a credit rate of 1.25% also allowed. This has been applied to all build costs and land payments. We have used the rate of 6.25%, however we have not allowed for a credit rate within the appraisal. The applicant’s overall cost of interest equates to £99,489, compared to CBRE’s assessment of £100,449. This is due to CBRE phasing the sales values following practical completion of the apartments.



**Fixed Land Value**

- 4.25 The applicant has included a fixed land value of £630,000, plus acquisition costs, which they state represents the 2007 purchase price, although no details have been provided to support this (i.e. Land Registry confirmation). They state that the inclusion of this figure would represent a reasonable return to the landowner (who is the applicant as the site has already been purchased) in line with the NPPF.
- 4.26 The applicant has also allowed for an acquisition cost of £76,850 which is to reflect an overage clause based on an uplift of £25 per sq ft over 10,000 sq ft of development. However the applicant has provided an extract from the report on title overage which shows a figure of £129,639 due to interest payments. For the purposes of CBRE’s appraisal, we have ignored this payment as we are assessing the residual land value and not taking account of actual purchase costs.
- 4.27 The output of CBRE’s appraisal is an RLV as opposed to a residual profit. We then compare the outturn RLV to a benchmark land value based on the site and its location. This commentary is provided in the following section.
- 4.28 SDLT has been adopted by the applicant at £13,700 however given the different RLV produced under CBRE’s baseline appraisal the SDLT payment is nil.
- 4.29 Agency and legal fees have been included at 1.75%, which we consider to be reasonable.

**Phasing and Programme**

- 4.30 The applicant has assumed the following:
  - Construction period – 12 months
  - Sales period – 6 months (commencing nine months after the start of construction)
- 4.31 We consider the applicant’s timescales to be reasonable, however we have assumed sales of the apartments will begin on practical completion of the apartments.

**SALES VALUES ASSUMPTIONS**

**Residential Values**

- 4.32 The applicant has presented to CBRE its anticipated average sales values of £2,684 per sq m (£249 per sq ft). This equates to an average capital value of between £100,000 and £115,000 for the one bedroom units and £125,000 and £155,000 for the two bedroom units and £180,000 for a two bedroom penthouse apartment.
- 4.33 CBRE has undertaken a review of local market comparable evidence in Sittingbourne and the surrounding area, which we set out in Appendix 3. We comment that there is very little evidence available in the immediate area of the site, so we have considered new build developments as well as secondary evidence within five miles of the site.
- 4.34 The evidence presented in Appendix 3 indicates that the average new build price range for one and two bedroom apartments is £216,997. We were unable to ascertain the sizes of these properties so we cannot analyse these on a price per sq m/sq ft basis. However on a capital value basis these are significantly higher than those being adopted by the applicant.
- 4.35 We would however comment that these apartments are located in Rainham which is a superior location and are being developed out by Redrow as part of a larger scheme which is to a high specification. One apartment is being marketed in Faversham, which is a

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DEVELOPMENT APPRAISAL ASSUMPTIONS AND METHODOLOGY



- conversion of an existing property and is situated above a commercial unit, so again not directly comparable. These properties assume a 'gross asking price' and do not take into account any incentives that may be offered as part of a sale which could comprise up to a 5% deduction.
- 4.36 The secondary evidence presented in Appendix 3 demonstrates an average asking price for one bedroom apartments of £2,788 per sq m (£259 per sq ft), which based on an average size of 45 sq m (483 sq ft) equates to an average capital value of £125,097.
- 4.37 The average asking price for two bedroom apartments equates to £2,766 per sq m (£257 per sq ft), which based on an average size of 63 sq m (678 sq ft) equates to an average capital value of £174,246.
- 4.38 The overall average asking price (for one and two bedroom apartments) equates to £2,766 per sq m (£257 per sq ft).
- 4.39 From the comparable evidence listed above, CBRE notes that the evidence is gathered from circa five miles from the subject site and some of the sites are located in superior locations to that of the subject property; they vary in unit size to those provided on site; and/or have been finished to a high specification (i.e. Redrow at Rainham). We also note that a significant amount of the comparable evidence gathered is secondary accommodation which is significantly larger than the proposed apartments at the subject site.
- 4.40 As a result we have increased the applicant's values of the proposed apartments by £65 per sq m (£6 per sq ft), equating to an average value of £2,749 per sq m (£255 per sq ft). We would expect new build apartments to generate a premium over secondary accommodation, however we do acknowledge that the secondary comparable accommodation is generally larger than the proposed apartments. We have therefore adopted a rate per sq m /per sq ft in line with the secondary comparable accommodation gathered.
- 4.41 The applicant has also assumed ground rents of £150 per unit per annum for the apartments and capitalised this income at a rate of 5%. Based on the advice from our in-house residential valuation team, the yield applied could be slightly keener. The location of the development is not entirely the determining factor, it is the security of income and terms of the ground lease. We have evidence of schemes in Derby achieving a yield in line with some apartments developments in London (circa 3%).
- 4.42 We have also undertaken research of ground rents which have recently been sold or are currently being marketed and have found one comparable of a block of 12 flats in Faversham:
- Ground rent investment on development of 12 flats built in 2012
  - Landlord manages/insures and recovers from leaseholders
  - 12 flats paying total annual ground rent of £3,000 per annum
  - Ground rents double every 33 years
  - Leases 999 years from 2013
  - Asking price £60,000
  - Yield of 5%

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- 4.43 We have therefore adopted a rental level of £200 per unit per annum for the one bedroom apartments and £250 per unit per annum for the two bedroom apartments and have capitalised at a yield of 5%. We assume that the ground rent structure is on the basis of minimum term of 150 year with 10 yearly rent reviews based on RPI uplifts. This structure is the current institutional standard for investment purchases and ensures the properties remain in line with mortgage company standards.

## 5.0 Development Appraisal Results

- 5.1 We have provided in the table below a summary of the RLV produced under CBRE’s appraisal based on the assumptions outlined above and provide a commentary which compares the outcome of CBRE’s appraisal to benchmark land values considering the site and location.

Table 3  
Output of CBRE’s Appraisal

SCENARIO	GROSS DEVELOPMENT VALUE (GDV)	TOTAL DEVELOPMENT COST (TDC) EXCLUDING LAND	PROFIT	RLV (NET OF SOLT AND FEES)
CBRE Appraisal (no on-site affordable housing but £40k S106)	£3,395,439	£2,585,255	£628,156 (18.5% on GDV)	£148,431 (£424,089 per gross acre)

CBRE, 2017

### Benchmark Land Value

- 5.2 To assess whether CBRE considers the baseline scenario to be ‘viable’ we need to assess the reasonableness of the RLV produced when compared to a benchmark land value taking into account the site and location. We do not consider the applicant’s use of the historic purchase price as relevant for the purposes of the viability assessment, given that the site was purchased in 2007.
- 5.3 The RICS Financial Viability in Planning Guidance Note (2012) states at page 19, paragraph 3.6 that ‘site purchase price may or may not be material in arriving at a Site Value for the assessment of financial viability. In some circumstances, the use of actual purchase price should be treated as a special case. The following points should be considered:
- A viability appraisal is taken at a point in time, taking account of costs and values at that date. A site may be purchased some time before a viability assessment takes place and circumstances might change. This is part of the developer’s risk. Land values can go up or down between the date of purchase and a viability assessment taking place; in a rising market developers benefit, in a falling market they may lose out.
  - A developer may make unreasonable/overoptimistic assumptions regarding the type and density of development or the extent of planning obligations, which means that it has overpaid for the site.
  - Where plots have been acquired to form the site of the proposed development, without the benefit of a compulsory purchase order, this should be reflected either in the level of Site Value incorporated in the appraisal or in the development return. In some instances, site assembly may result in synergistic value arising.
  - The Site Value should always be reviewed at the date of assessment and compared with the purchase price and associated holding costs and the specific circumstances in each case.
- It is for the practitioner to consider the relevance or otherwise of the actual purchase price, and whether any weight should be attached to it, having regard to the date of assessment and the Site Value definition set out in this guidance.’*
- 5.4 Given the site was purchased ten years ago without the benefit of planning consent and therefore we cannot be sure what assumptions were made at the point of acquisition as to the type of development or extent of planning obligations we feel that the RLV produced by

- CBRE's appraisal should be compared with the sale of comparable sites in the open market at the current time.
- 5.5 CBRE has therefore undertaken a review of recent sales of development sites in Sittingbourne and the surrounding areas. There is a general lack of recent comparable evidence, however those sites most comparable are as follows:
- Development Site, Car park, Albany Road, Sittingbourne – sale of a 0.24 acre site in March 2013 for £130,000 (£540k per acre). The vendor was HM Courts and Tribunals Service and the buyer was Bailey Investments. The site, although in a comparable location and of a similar size was sold as an investment as the site is currently used as a car park;
  - Headcorn Hall - Biddenden Rd, Headcorn, TN27 9JD - An undisclosed buyer (residential developer) purchased the freehold interest in 1.93 ha (4.83 acres) of land from joint administrators to Brackenall Properties Ltd for £1,740,000 (£360,248 per gross acre) for residential development in March 2015. The site is circa 17 miles from the subject site in a better location and had planning consent for 10 luxury dwellings subject to a S106 agreement. The site was also a distressed sale;
  - East Hall Lane, Sittingbourne, ME10 3TJ – sale of a 3.23 acre site in December 2015 for £575,000 (£178k per acre). The site comprises broadly level grassland. The site was sold as an investment to an undisclosed buyer. There is a lapsed consent which was granted under reserved matters from 12 July 2007. This comprises a supermarket (10,215 sq ft) and 9 further retail units (including a convenience store and veterinary surgery) ranging in size from 1,000 sq ft to 2,500 sq ft. At first and second floor levels there 11 two bed and one bed flats. There is also permission for a 4,000 sq ft public house. The location is comparable but the existing use is grassland whereas the subject site is a brownfield site. The type of development also includes commercial uses as well as residential; and
  - Land at Halfway Road, Sheerness, ME12, 3AR – the 0.92 acre site was sold in February 2010 for £485,000 (£527k per acre). The site was bought by New Homes Ltd. The site is in a comparable location
- 5.6 The output of CBRE's development appraisal was a residual land value of circa £148,431 (equating to £1,047,923 per ha/£424,089 per gross acre). We consider the most comparable sites above to be the development site at Albany Road in Sittingbourne; Headcorn Hall; and land at Halfway Road.
- 5.7 The development site at Albany Road was sold as a 'development site' and therefore potentially has hope value built into the purchase price to secure change of use to residential use. The site at Headcorn Hall was sold with planning consent for 10 luxury houses subject to a S106 Agreement, but was a distressed sale. We were unable to verify at the time of the report whether the site at Halfway Road was sold with planning consent.
- 5.8 Based on the above and given the subject site already has planning consent for residential development (albeit assuming a policy compliant level of affordable housing) we believe the benchmark land value to be in the region of £185,500 (£1,309,630 per ha/£530k per gross acre).
- 5.9 We therefore consider the proposed development to be marginally unviable given it produces an RLV circa £37,069 below what we consider to be a benchmark land value.

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**Summary**

- 5.10 We therefore consider the applicant's offer which consists of the following items to be reasonable:
- nil on-site affordable housing provision;
  - a £40,000 S106 contribution (including circa £3,809 as a commuted sum for affordable housing); and
  - a viability review on the occupation of the 21<sup>st</sup> unit with a minimum additional payment of £31,000 in lieu on on-site affordable housing.
- 5.11 A formal viability review should be undertaken prior to the occupation of the 21<sup>st</sup> unit and this requirement should be a term of the S.106 Agreement. We would expect the viability to be reviewed in full based on an agreed baseline appraisal and should the viability of the scheme improve beyond the £31,000 offer then this would be reflected in the payment at that point in time.

## 6.0 Summary and Recommendation

- 6.1 The purpose of this report has been to review the applicant’s development appraisal and subsequently to provide development appraisal and viability advice to SBC as part of the planning application process.
- 6.2 The applicant has presented a Viability Report and an accompanying development appraisal dated June 2017 which tests the viability of an apartment development with nil on-site affordable housing provision and S106 contributions of £40,000 (including a £3,809 commuted sum for affordable housing).
- 6.3 The applicant concludes that they are willing to progress on this basis despite the appraisal producing a developer’s profit of only £21,617 (or 0.65% profit on GDV), but allowing for the historic purchase price dating back to 2007 within the appraisal.
- 6.4 CBRE has modelled a ‘toolkit’ development appraisal to establish whether there are viability issues associated with the scheme and whether there is scope for negotiation on the level of affordable housing to allow scheme progression.
- 6.5 CBRE’s ‘toolkit’ appraisal (assuming nil affordable housing and S106 contributions of £40,000), includes a fixed developer’s profit within the appraisal and residualises the land value. We then compare the RLV to a benchmark land value given the site and its location.
- 6.6 We do not believe that the historic purchase price or the average payment paid by the applicant should be included within the appraisal the land was acquired 10 years ago and we are not aware of the assumptions that informed the acquisition price.
- 6.7 CBRE’s RLV equates to £148,431 (£1,047,923 per ha/£424,089 per gross acre). We have included a fixed profit of £628,156 (18.5% on GDV). The applicant’s historic purchase price equated to £630k (£1.8 million per acre).
- 6.8 CBRE’s RLV can then be compared to a benchmark land value taking into account the site and its location. CBRE has reviewed the local market and believes the benchmark land value to be £185,500 (£530k per gross acre).
- 6.9 As a result CBRE’s baseline policy compliant appraisal is currently circa £37,069 below what we consider to be the benchmark land value.

### RECOMMENDATION

- 6.10 In light of the review undertaken and assumptions applied, CBRE’s analysis shows that the scheme cannot support the delivery of on-site affordable housing in addition to the £40,000 S106 contribution allowed for. Therefore we consider the applicant’s offer of £40,000 of S106 contributions and a viability review following the occupation of the 21<sup>st</sup> unit with a minimum additional payment of £31,000 to be reasonable.
- 6.11 However as noted in paragraph 5.11 above we would suggest that there is a formal viability review undertaken at the point of occupation of the 21<sup>st</sup> unit utilising an agreed baseline appraisal. We believe this should be incorporated in the S.106. This should test whether a payment above the £31,000 offer can be achieved at that point in time.

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Prepared By: 	Donna Pickersgill Associate Director, National Regeneration and Development Advisory For and on behalf of CBRE Ltd
Edited and finalised by: 	Caroline Mitchell-Sanders Director – National Regeneration and Development Advisory For and on behalf of CBRE Ltd
Date of Issue: 31st August 2017	Status: FINAL



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# APPENDICES

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**Appendix 1 – Site Location Plan**

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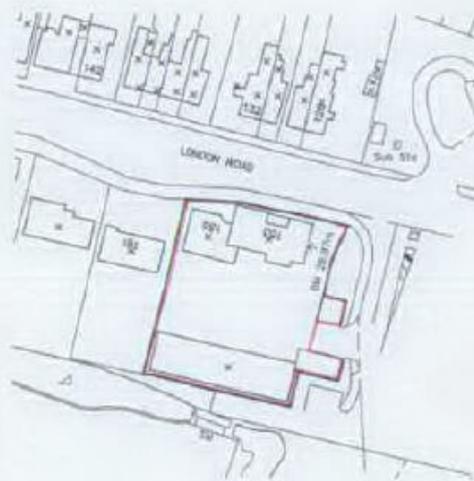
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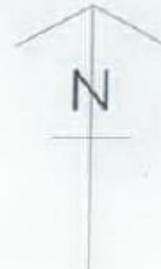
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SWALE BOROUGH COUNCIL  
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Location Plan Scale 1:1250

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**Appendix 2 – Additional Land**

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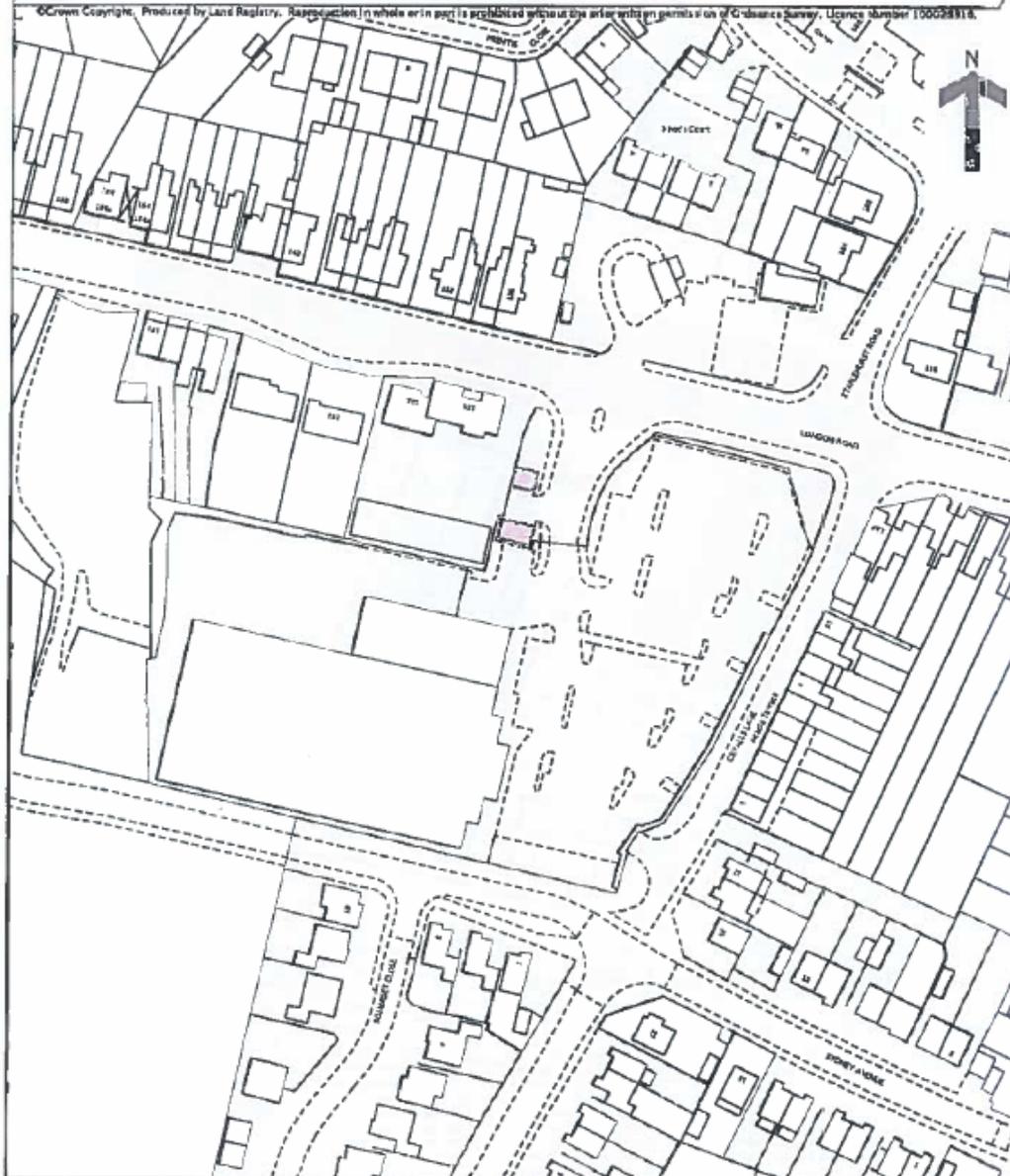
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**Land Registry  
Official copy of  
title plan**

Title number **K944405**  
Ordnance Survey map reference **TQ8963NW**  
Scale **1:1250**  
Administrative area **Kent : Swale**



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**Appendix 3 – Sales Comparables**

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**4 APRIL 2019**

#### Standard Index to Contents

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

**PART 1** Reports to be considered in public session not included elsewhere on this Agenda

**PART 2** Applications for which permission is recommended

**PART 3** Applications for which refusal is recommended

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

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

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

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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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**PLANNING COMMITTEE – 4<sup>th</sup> APRIL 2019**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 18/501726/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of a 3 storey building comprising of an amusement centre (adult gaming centre) on the ground floor with 2 x single bedroom flats on the upper floors.			
<b>ADDRESS</b> Land Between 119A And 121A High Street, Sittingbourne, Kent, ME10 4AQ.			
<b>RECOMMENDATION</b> Grant.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION.</b> The development would provide an additional unit on a vacant plot within the High Street, and therefore would not erode or diminish the retail offering of the Core Shopping Area. The development would also provide two residential flats within a sustainable, central, urban location.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Officers are seeking to amend the Committee’s previous resolution in order to add four conditions requested by the Environment Agency, and remove one condition which would be duplicated.			
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Godden Two LLP <b>AGENT</b> Roger Etchells & Co	
<b>DECISION DUE DATE</b> 23/05/18	<b>PUBLICITY EXPIRY DATE</b> 25/05/18		
<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>
SW/10/0012	Erection of three storey building to provide shop at ground floor with two flats above (resubmission of SW/06/0033).	Granted.	2010
The development would have provided an additional retail unit within the Core Shopping Area and two residential flats within a sustainable urban location, and would have sat comfortably within the context of the High Street Conservation Area. That permission has now expired, however.			
SW/06/0033	Erection of three storey building to provide shop at ground floor with two flats above.	Granted.	2006
SW/01/1254	Shop unit with storage above with associated external works and roads.	Granted.	2001

SW/97/0025	Change of use to an AGC / amusement centre. (Olympia Leisure, 62 High Street.)	Refused, allowed at appeal.	1997
<p>This permission relates to the existing AGC at 62 High Street, where permission was refused by the Council but the subsequent appeal allowed by the Inspector, who considered that such uses would not detract from the wider retail offering, vitality, and viability of the High Street. Further commentary is set out in the main report, below.</p>			

**1.0 INTRODUCTION**

- 1.01 Members may recall that this item was presented for consideration at the meeting on 8 November 2018, where Members voted to approve the application subject to securing a SAMMS payment.
- 1.02 The agreed minutes refer to the officer’s verbal update in respect of additional standard conditions requested by the Environment Agency (to ensure groundwater is not contaminated by any unknown contaminants on the site). However, Members’ final, agreed, and minuted resolution does not delegate powers to officers to add those additional conditions to the decision notice.
- 1.03 It is thought that this is a simple oversight with the drafting and agreement of the minutes, but it is important that the Environment Agency’s requested conditions are attached to the decision notice in the interest of protecting groundwater supplies from potential contaminants (the site is within Source Protection Zone 1), and Members would need to formally amend the original resolution to give officers power to do so.
- 1.04 The conditions and informatives are set out below. Conditions 5, 6, 7, and 8 are the four additional conditions requested by the Environment Agency. Condition 10 of the previous report has been deleted as it would be duplicated by condition 8 below.
- 1.05 I am requesting delegation from the committee to add these additional conditions to the decision notice (which has not yet been issued), and remove the duplicated condition.
- 1.06 The application remains identical in all other respects, and the applicant has recently agreed to the SAMMS payment. The original report and minutes are attached for reference.

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

**CONDITIONS**

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.  
  
Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
- (2) No development shall take place other than in complete accordance with drawing 007/18/02.  
  
Reason: In the interest of visual amenity and preserving or enhancing the character and appearance of the conservation area.

- (3) 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
  - i. 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
  - 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 the amenities of the area and highway safety and convenience.

- (4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification, 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.

- (5) No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

A. A preliminary risk assessment which has identified:

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors; and
- potentially unacceptable risks arising from contamination at the site.

B. A site investigation scheme, based on (A) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

C. The results of the site investigation and the detailed risk assessment referred to in (B) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

D. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (C) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution in line with paragraph 170 of the National Planning Policy Framework.

- (6) Prior to any part of the permitted development being occupied a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete.

- (7) 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.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution from previously unidentified contamination sources at the development site.

- (8) 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.

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

- (9) 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.

Reason: To protect controlled waters, including groundwater and to comply with the National Planning Policy Framework. Piling or any other foundation designs using penetrative methods can result in risks to potable supplies from, for example, pollution / turbidity, risk of mobilising contamination, drilling through different aquifers and creating preferential pathways. Thus it should be demonstrated that any proposed piling will not result in contamination of groundwater.

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

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

Reason: In the interests of residential amenity.

- (11) 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, including details of finishes and colouring, 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 and preserving or enhancing the character and appearance of the conservation area.

- (12) No development beyond the construction of foundations shall take place until detailed drawings (at a suggested scale of 1:5) of all new external joinery work, fittings, and the new shopfront hereby permitted, together with sections through glazing bars, frames and mouldings, have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the conservation area.

- (13) No development beyond the construction of foundations shall take place until manufacturer's specifications of the windows, doors, balconies, and balustrades be used on the development hereby permitted have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (14) No development beyond construction of foundations shall take place until 1:2 plan and vertical part section drawings showing the degree to which all window frames will be set back from the brick face of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (15) The brickwork on the front (High Street) elevation of the building hereby permitted shall be laid in Flemish Bond.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (16) No light fittings, pipework, vents, ducts, flues, meter boxes, alarm boxes, ductwork, satellite dishes, or other appendages shall be fixed to the High Street elevation of the building hereby permitted unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- (17) The use of the ground floor of the premises hereby permitted shall be restricted to the hours of 09.00 to 22.00 Monday to Saturday, and 10.00 to 21.30 on Sundays and Bank Holidays.

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

- (18) The use of the ground floor of the premises hereby permitted shall not commence until a scheme of soundproofing between the ground floor and the residential units above has been submitted to and approved in writing by the Local Planning Authority. Upon approval the scheme shall be implemented as agreed.

Reason: In the interest of residential amenity.

### **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.

### **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 of the works prior to commencement on site.

2. A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk). Please read our New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link

<https://beta.southernwater.co.uk/infrastructurecharges>

Due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.

The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).

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.



**Land Between 119A and 121A High Street Sittingbourne**  
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<b>2.8 REFERENCE NO - 18/501726/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of a 3 storey building comprising of an amusement centre (adult gaming centre) on the ground floor with 2 x single bedroom flats on the upper floors.			
<b>ADDRESS</b> Land Between 119A And 121A High Street, Sittingbourne, Kent, ME10 4AQ.			
<b>RECOMMENDATION</b> Grant subject to conditions and receipt of comments from County Archaeologist			
<b>SUMMARY OF REASONS FOR RECOMMENDATION.</b> The development would provide an additional unit on a vacant plot within the High Street, and therefore would not erode or diminish the retail offering of the Core Shopping Area. The development would also provide two residential flats within a sustainable, central, urban location.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Ward Councillor Whelan.			
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Godden Two LLP <b>AGENT</b> Roger Etchells & Co	
<b>DECISION DUE DATE</b> 23/05/18	<b>PUBLICITY EXPIRY DATE</b> 25/05/18		
<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>
SW/10/0012	Erection of three storey building to provide shop at ground floor with two flats above (resubmission of SW/06/0033).	Granted.	2010
The development would have provided an additional retail unit within the Core Shopping Area and two residential flats within a sustainable urban location, and would have sat comfortably within the context of the High Street Conservation Area. That permission has now expired, however.			
SW/06/0033	Erection of three storey building to provide shop at ground floor with two flats above.	Granted.	2006
SW/01/1254	Shop unit with storage above with associated external works and roads.	Granted.	2001
SW/97/0025	Change of use to an AGC / amusement centre. (Olympia Leisure, 62 High Street.)	Refused, allowed at appeal.	1997
This permission relates to the existing AGC at 62 High Street, where permission was refused by the Council but the subsequent appeal allowed by the Inspector, who considered that such uses would not detract from the wider retail offering, vitality, and viability of the High Street. Further commentary is set out in the main report, below.			

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**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is a vacant plot situated between Wimpy and the (currently empty) former Mothercare units on Sittingbourne High Street. It is enclosed by a close-boarded timber fence to the front and rear, largely overgrown, and backs on to a small parking / service yard to the rear of the High Street units.
- 1.02 The Sittingbourne High Street Conservation Area boundary runs along the front of the site, with the actual plot itself excluded from the designation.

**2.0 PROPOSAL**

- 2.01 This application seeks planning permission for the erection of a three-storey building to provide an adult gaming centre (AGC) at ground floor with two one-bed flats on the upper floors.
- 2.02 The scale and design of the building is almost identical to the scheme approved previously under SW/10/0012 and SW/06/0033, with a pitched roof and decorative projecting bay feature to the front, vertically proportioned windows on the upper floors, and a traditional shopfront design at ground floor. The building will stand approximately 13.5m tall (similar height to the Mothercare building), 6m wide, and 24m deep (to match the depth of Mothercare) at two-storey level with a single storey bin / cycle store projecting 6m further along the flank elevation of Wimpy.
- 2.03 The proposed first floor flat would include a bedroom, lounge, kitchen, bathroom, and storage space. The second floor flat would have a bedroom, bathroom, storage space, and combined kitchen / lounge. Both flats would have floor spaces well in excess of the National Space Standards. Access to the flats would be via the rear of the building.
- 2.04 The proposed AGC at ground floor would feature "retail display" windows within the shopfront, an open area for gambling / gaming machines occupying the majority of the floor space, and a small office, toilet, and kitchen area towards the rear. The submitted Planning Statement comments:

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- 4.7 The activity proposed for the ground floor is that of an adult only amusement centre (Adult Gaming Centre) consisting of gaming machines, ancillary catering (light refreshments, tea and coffee) and retail sales. Such establishments are found in most shopping centres. Indeed, there is a similar one in this centre at 62 High Street. They have different effects from amusement arcades. There is a statutory obligation to exclude under 18's.
- 4.8 The ground floor premises would be soundproofed and have a window display of goods.
- 4.9 Customer Usage - It is generally accepted that this kind of establishment attracts the same type of person as nearby shops. It also attracts them in similar numbers. There is considerable evidence confirming these characteristics which can be provided if requested.
- 4.10 Appearance - The proposal would be different visually from other non-retail uses. The public perception is that the window displays compare favourably with retail uses let alone other non-retail uses. Such displays have frequently been compared favourably with shops and other non-retail uses by Inspectors dealing with appeals.
- 4.11 Amusement centres of this kind are harmless to nearby traders. They do not cause noise or disturbance.
- 4.12 I am confident that the proposal will:
  - (1) Enable the development of a longstanding 'gap' site to the benefit of the appearance and functioning of the town centre.
  - (2) have no adverse impact on retailing activity;
  - (3) add to diversity, choice and competition in the shopping area;
  - (4) not harm the character or trade of the shopping centre;
  - (5) enhance the vitality of the shopping centre;
  - (6) add to the evening economy;
  - (7) provide 2 new dwellings.
- 4.13 There is considerable evidence confirming these characteristics which can be provided if requested.
- 4.14 It is intended that the shopfront will incorporate an attractive window display of goods for sale to attract the interest of the passer-by. The display will be changed to maintain visual interest. The display can be favourably compared with those of many shops and non-retail uses in the shopping centre and would be preferable to the continued vacancy of the site.

3.0 SUMMARY INFORMATION

	Proposed
Site Area	139sqm.
Approximate Ridge Height	13m
Approximate Eaves Height	11m
Approximate Depth	24m
Approximate Width	6m
No. of Storeys	3
Parking Spaces	0
No. of Residential Units	2

4.0 PLANNING CONSTRAINTS

- 4.01 As noted above: the site frontage abuts the Sittingbourne High Street Conservation Area boundary.

5.0 POLICY AND OTHER CONSIDERATIONS

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5.01 The National Planning Policy Framework (NPPF) and National Planning Policy Guidance) NPPG do not contain specific policies relating to amusement centres. However, such premises fall within the definition of “Main town centre uses” (which includes entertainment uses, sport and recreation, casinos, and bingo halls, amongst others) set out in Annex 2 to the NPPF. Therefore, such activities are subject to the general provisions in Section 2 of the NPPF. These include a requirement that Councils set out clear definitions of primary and secondary shopping frontages in their Local Plan, together with policies setting out which uses will be permitted in such locations. The NPPF does not preclude activities like amusement centres or casinos from primary frontages, provided that they contribute to the mix of uses within the area and do not result in the significant degradation of the areas’ retail function.

5.02 Para. 85 of the NPPF states:

*Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Policies should:*

- d) *allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead. Meeting anticipated needs for retail, leisure, office and other main town centre uses over this period should not be compromised by limited site availability, so town centre boundaries should be kept under review where necessary;*

5.03 Policies Regen 1 (central Sittingbourne regeneration area), CP1 (strong, competitive economy), CP4 (good design), CP8 (historic environment), DM1 (vitality and viability of town centres), DM7 (vehicle parking), DM14 (general criteria), DM15 (new shopfronts, signs, and advertisements), and DM33 (conservation areas) of the adopted Swale Borough Local Plan 2017 are relevant.

5.04 Of particular relevance are the following policy extracts:

CP1

*Actions by public, private and voluntary sectors shall work towards the delivery of the Local Plan economic strategy. Development proposals will, as appropriate:*

- 3. *Secure additional non-food retail/leisure growth, taking account of committed schemes and existing centres and provide flexibility over uses in town centres to enable them to respond to the challenges they face;*

DM1

*In town centres and other commercial areas, planning permission will be granted for development proposals, in accordance with the following:*

- 1. *Within the defined primary shopping frontages, as shown on the Proposals Map, the Borough Council will permit non-retail uses that:*
  - a. *maintain or enhance the primary retail function of the area by adding to the mix of uses to help maintain or increase its overall vitality and viability, especially where providing a service or facility for residents or visitors currently lacking or*

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*under-represented in the town centre, or by increasing pedestrian activity in the immediate locality;*

- b. do not result in a significant loss of retail floorspace or the break-up of a continuous retail frontage;*
- c. do not lead to a concentration of non-retail frontage; and*
- d. do not result in the loss or erosion of a non-retail use that underpins the role, functioning, vitality and viability of the area.*

**Regen 1**

*A regeneration area for central Sittingbourne, including its town centre, is shown on the Proposals Map. Within this area proposals which support the objective of consolidating and expanding Sittingbourne's position as the main retail, business, cultural, community and civic centre for the Borough, will be permitted.*

A. *Development within the area will proceed in accordance with, or complement, a Masterplan to be prepared to support the development agreement between the regeneration partners and will accord with the key objectives of:*

- 1. Providing additional comparison retail space and uses which provide greater vitality, viability, diversity and activity;*

B. *All development proposals will:*

- 1. Accord with Policies DM 1 and DM 2 to maintain and enhance the retail offer of the primary shopping areas, whilst introducing uses there and elsewhere within the town centre which achieve greater vitality, viability and diversity of services and facilities, alongside buildings of architectural excellence. Where town centre vitality and viability is not harmed, other sites able to achieve similar objectives will be permitted within the regeneration area defined by this policy;*
- 2. Maintain or enhance key non-retail uses which underpin the retail and community functions of the town centre for both day and night time economy;*
- 3. Provide for residential development of suitable type and scale above commercial premises, or as part of mixed use developments, or on other suitable sites;*

**6.0 LOCAL REPRESENTATIONS**

6.01 The application has been called in by Ward Councillor Whelan.

6.02 We have received objections from five separate addresses (including a very lengthy series of objections from a planning agent on behalf of Olympia Leisure – the existing Adult Gaming Centre (AGC) further along the High Street) raising the following summarised concerns:

- The existing parking area to the rear is over-subscribed and further vehicles will make access to the shop units more difficult;
- Another "betting shop" will give a sense of deprivation within the town centre;
- The site should be developed for retail purposes, which will provide employment and encourage visitors;
- The High Street needs more shops; and
- The proposal would be contrary to policy DM1.

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- 6.03 The objection on behalf of the existing AGC is more technical in respect of its references to planning policies and AGC practices, and raises the following summarised points:
- Changes in legislation in the early 2000s allowed larger payouts, which increased the number of customers and footfall, and consequently lead to an expansion of these sorts of premises within town centres with Fixed Odds Betting Terminals (FOBTs) overtaking traditional bookmakers in popularity;
  - The smoking ban has affected footfall in AGCs, discouraging many elderly and female visitors, leading to a largely male customer profile;
  - This lead to an approximately 20% drop in profits nationally;
  - The submitted "customer profile" supporting the application is therefore out of date, and footfall is likely to be much lower than anticipated. AGCs therefore contribute little to 'vitality and viability';
  - A number of footfall surveys from Dover have been provided to demonstrate that other retail units have higher footfall than AGCs / footfall will be lower than projected;
  - The "retail display" within the shop front is not representative of the use (nor do the applicants have a retail display in any of the 14 existing AGCs elsewhere), as any retail use is wholly subservient to the use as an AGC, and would not encourage customers other than those intending to use the gaming/betting machines;
  - In reality, and as at other AGCs, the windows will most likely be empty or covered in advertisements for the premises, and the display of retail goods would be difficult to enforce;
  - The Council has a duty to consider public health, particularly in respect of at-risk persons (or "problem gamblers") who may use the premises;
  - Policy DM1 can't be interpreted to support the proposed development;
  - Approval would lead to a concentration of non-retail frontage;
  - No evidence has been provided to demonstrate that a retail use is not viable here;
  - Such uses should be directed to secondary shopping areas; and
  - There are multiple "machine gaming venues" within Sittingbourne already:
    - o William Hill, Paddy Power, Betfred, Olympia Leisure, Coral, and Mecca Bingo, as well as fruit machines within pubs.

**7.0 CONSULTATIONS**

- 7.01 KCC Highways have not commented as the scheme falls below their protocol response threshold.
- 7.02 Southern Water requests a condition to secure details of surface water drainage and a standard informative in respect of connections to the sewer network (both set out below) to be attached to any grant of permission,
- 7.03 The Council's Economic Development Officer does not support the scheme, commenting:

*"The top end of the High Street forms part of the core retail area and is well used by the local community. Vacancy rates are low at this end of the High Street, with only two units currently vacant. Whilst it is unlikely the proposed development would have a significant negative impact on overall trade within Sittingbourne town centre, it is also unlikely that it would contribute to the vitality, viability, or wider offering of the High Street. Given the nature of the proposed ground floor use, the offer is limited in as much as the customer base would be over 18s only.*

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*The current regeneration scheme in Sittingbourne town centre includes delivery of a new leisure offer. Alongside this we would seek to promote and protect the current functions of the High Street."*

- 7.04 The Council's Environmental Health Manager has no objections subject to standard conditions in respect of hours of construction, installation of sound-proofing between the ground floor and the flats above, and hours of use (he has suggested hours to match those at the existing AGC (Olympia Leisure) on the High Street).
- 7.05 The County Archaeologist has no objection subject to a standard condition, as set out below.

**8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 The application is supported by relevant plans, drawings, and a Planning, Design & Access Statement.

**9.0 APPRAISAL**

Principle

- 9.01 The application site lies within the built up area of Sittingbourne, and within the primary retail area, where policies DM1, CP1, and Regen 1 generally encourage non-retail uses provided that they do not lead to a concentration of non-retail frontage; maintain or enhance the primary retail function by adding to the mix of uses; and do not result in a significant loss of retail floorspace.
- 9.02 In this instance, as the development amounts to a new build on a currently vacant plot, it can't (in my opinion) reasonably be argued that the scheme would result in the loss of retail floorspace that would have a consequent negative impact on the retail offering within the town centre.
- 9.03 The following commentary from the Development Control Practice manual is helpful (my emphasis in bold):

*17.533 It is clear from the evidence of cases over the years that many local authorities have used "loss of shops" as a front for non-planning objections on the basis of moral antipathy to gambling.*

*17.5331 In the majority of appeal cases local authorities have found it difficult to sustain arguments that harm will be done by a change of use of retail premises to amusement centres in primary (or core) shopping areas, even if they contravene local plan policies.*

*It was proposed to change the use of a shop in Dartford to an amusement centre. An inspector accepted that the centre seemed to have a reasonably bustling atmosphere with an emphasis on value-for-money retailers. The appeal site he observed was in a prominent location being directly opposite a main high street entrance to an indoor shopping precinct. Its loss would therefore dilute the retail element of the primary shopping frontage at a critical point, which would harm the overall vitality of the centre. While a window display could be provided this would not act as a substitute for a shop and would not act as any real shopping stimulus. It was judged that the centre would be a 'weak' use, which would fail to replicate "the shopping vitality of a true A1 use within the primary frontage"...*

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*The inspector's decision was quashed in the High Court by consent and remitted back to the SOS The Noble Organisation v SOS & Dartford BC 14/5/02. A judge held that the inspector had not properly reasoned why the appeal proposal did not measure up to being an acceptable alternative function of the premises as compared with a conventional A1(a) shop. Nevertheless, a second inspector upheld the decision of the first inspector, ruling that the change of use would dilute the retail element in a key part of the town centre, which would undermine perceptions of the town centre as an attractive shopping destination. The appeal was dismissed...*

*However, this decision was quashed in the High Court, but by consent, and a third inquiry resulted. The council now accepted that an amusement centre could be appropriate in a primary shopping area, but argued that much depended upon the vitality and viability of the centre concerned and in the case of Dartford, it was quite fragile. A third inspector agreed that it was desirable in principle to ensure that retail premises should remain in shopping use, particularly within the central parts of the town. However the premises had been on the market for a number of years and had been let only on short term leases. They appeared to be functionally obsolete for modern retail use and consequently their re-use for leisure purposes would assist in diversifying the town's economic base and make a positive contribution to the vitality of the town centre. As to character it was concluded that if the change of use were permitted shoppers would recognise the premises as an amusement centre and regard it as another element in the make up of the town centre."*

- 9.04 There are, of course, appeal decisions that have upheld refusals for AGCs in primary retail areas, but these almost exclusively relate to proposals for change of use of an existing retail premises, and not to the provision of an entirely new building on vacant plots. It's therefore hard to draw comparisons.
- 9.05 Taking the broad policy support and national appeal decisions into account I consider that the principle of the proposed development is acceptable.

#### Non-retail uses, and vitality of High Street

- 9.06 I note that the Council's Economic Development officer objects to the scheme, but I find it hard to convert their objection into a reason for refusal in light of the policy support above.
- 9.07 There is only one other AGC within the High Street and the current proposal would therefore add to the diversity of uses within the core shopping area in my opinion, and the two are situated a reasonable distance apart so as not to oversaturate a particular part of the town centre. Objectors have also suggested that the existing betting shops on the High Street should be counted alongside the proposed AGC as similar uses. Within the High Street there is Paddy Power to the west of this site (adjacent to Lloyds Bank) and Betfred to the east (adjacent WH Smith). If approved this scheme would therefore result in a total of 4 AGC / betting shops within the town centre, spread roughly the length of the Core Shopping Area.
- 9.08 Whilst I appreciate Members may be concerned about the number of gambling establishments on the High Street I would refer to the advice of the DCP at 9.03 above and reiterate that a moral objection to such premises doesn't translate to a planning refusal. There needs to be an identified harm, and in this instance I don't consider the

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number of such premises to be overwhelming or harmful to the overall mix of uses within this part of the town centre.

9.09 Within this part of the High Street, from Station Street to Central Avenue, there are 37 units, broken down as follows:

- 19 retail (some empty units, however);
- 10 financial and professional services (banks, estate/travel agents, barbers, etc);
- 5 food outlets (Subway, Wimpy, Greggs, Swell Café, Starbucks);
- 2 betting shops (Betfred and Paddy Power); and
- 1 church.

The dominant feature of this part of the High Street is therefore, to my mind, retail and supporting financial and professional services, and I don't consider that a third gaming/betting shop would alter that mix to the extent that planning permission could justifiably be refused.

9.10 Returning to the Economic Development officer's comments I would agree that it is desirable to protect the retail function of the High Street, but as set out above I do not consider that this development would dilute that retail offering (being an empty plot) or seriously harm the overall retail functioning of the defined Primary Shopping area.

9.11 Members may care to note the Inspector's decision for SW/97/0025, relating to 62 High Street, an existing AGC, in which they comment:

11. I also note that the reliance on shoppers as the main clientele of these establishments means that a location in a busy shopping area is considered to be important for business and that secondary areas are less favoured. In this case, because of the location of the appeal premises, between the main shopping attractions, there is a substantial pedestrian flow along the street. In my opinion this would not be lessened as a result of the proposed use in comparison with a retail use. In coming to this view, I have noted that similar amusement centres attract numbers of customers that correspond to or exceed those visiting nearby shops and business premises. Further to this, these amusement centres attract some additional custom to the shopping centres.

Scale, design, and visual amenity

9.12 The proposed building is, for all intents and purposes, identical to that approved twice before under the 2010 and 2006 permissions noted above. In that respect the scale, design, visual impact, and impact upon the character and appearance of the conservation area of the development have previously been considered and found to be acceptable. While those decisions were some time ago, and a new Local Plan has been adopted in the interim, I do not consider that the site circumstances, the appearance of the wider High Street, or the policy context (in respect of visual amenity) have changed significantly such that a refusal on these grounds would be in any way reasonable or justified. That aside, however, I consider the proposed building to be well designed and appropriate to its context.

9.13 Whilst the ground floor windows would not provide views into the premises (the interior of AGCs are screened from public view) the frontage would nevertheless provide a traditional shopfront using traditional materials (secured by condition below) which would enhance the character and appearance of the conservation area. I have also recommended conditions requiring Flemish Bond brickwork, submission of joinery

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details (including the new shopfront), submission of window details, and removal of PD rights for fixture and fittings on the High Street elevation, to ensure the frontage of the building contribute positively to the conservation area.

Public health

- 9.14 An argument has been put forward by one of the objectors that the Council has a duty to consider the health of residents when considering this proposal. It is true that planning takes factors such as this into account (such as when considering takeaways near to schools, for example), but in this instance it seems to me that the potential for harm is mitigated by other legislation. The Gambling Act 2005 includes provisions to restrict access by minors, and the Gambling Commission is currently considering changes to the legislation to reduce the maximum stake for fixed odds betting terminals / gaming machines. Government guidance prevents planning considerations and decisions from duplicating the provisions of other legislation.
- 9.15 Furthermore the Council's Licensing sub-committee agreed, at their meeting on 2<sup>nd</sup> October 2018, to adopt a Statement of General Principles to be used when considering licensing applications, including considerations in respect of minors, problem gamblers, and other associated issues. That document is due to be considered for adoption by Full Council at the meeting on 14<sup>th</sup> November 2018. The gaming license for this site was granted, in advance of planning permission, at the Licensing sub-committee meeting on 2<sup>nd</sup> February 2018, and consideration of that license took those general principles into account (albeit the Statement was still in draft at that time, awaiting committee agreement).
- 9.16 I therefore consider that the Council has considered the impacts of such a development upon the public health, and I do not consider this to amount to a justifiable reason for refusal.
- 9.17 I would also note that the agreed Statement of General Principles includes commentary in regards not being able to refuse such applications on the grounds of moral objections or general distaste for gambling / gaming premises. (See reference to para. 17.533 of the DCP at para. 9.03 above.)

Highways

- 9.18 The site lies within a sustainable, central location, immediately within the High Street and with good access to local shops, services, and public transport links. In such locations the required parking provision for the proposed flats, under current adopted guidance, is nil. Furthermore visitors to the proposed AGC are likely to either walk to the site or make use of public car parks or public transport. In that regard I have no serious concerns in respect of highway amenity or parking provision. I note local objection on parking grounds, but there is some parking to the rear of the premises, which is on private land and any anti-social parking thereon could be controlled by the landowners.

Amenity

- 9.19 The proposed flats have internal floorspace in excess of the minimum required by the national standard, and would provide a good standard of amenity for future occupants. Whilst no outdoor amenity space will be provided this is common to many dwellings above town centre shops, and is acceptable. Residents would be able to make use of the various town centre amenities, and the site is within walking distance of Albany recreation ground.

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9.20 I am concerned, however, about the potential for noise and disturbance from the ground floor use (from electronic machine sounds, customers, etc.) to affect the flats above. I have therefore recommended a condition requiring a scheme of soundproofing to be installed prior to first use of the ground floor premises.

**10.0 CONCLUSION**

10.01 This application proposes the erection of a building to infill a vacant plot on Sittingbourne High Street, with an adult gaming centre (AGC) at ground floor and two flats above. The proposed building is of a good design and would sit comfortably within the conservation area; the proposed AGC would not significantly harm the primary retail function of the High Street; and the proposed flats would provide a good standard of amenity for future occupants. Whilst I note local objection I do not consider there to be any justifiable grounds for refusal.

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

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

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

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

- 2) No development shall take place other than in complete accordance with drawing 007/18/02.

Reason: In the interest of visual amenity and preserving or enhancing the character and appearance of the conservation area.

- 3) 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
  - 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 the amenities of the area and highway safety and convenience.

- 4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in

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ITEM 2.8

accordance with a written programme and specification, 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.

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

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

Reason: In the interests of residential amenity.

- 6) 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, including details of finishes and colouring, 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 and preserving or enhancing the character and appearance of the conservation area.

- 7) No development beyond the construction of foundations shall take place until detailed drawings (at a suggested scale of 1:5) of all new external joinery work, fittings, and the new shopfront hereby permitted, together with sections through glazing bars, frames and mouldings, have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the conservation area.

- 8) No development beyond the construction of foundations shall take place until manufacturer's specifications of the windows, doors, balconies, and balustrades be used on the development hereby permitted have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- 9) No development beyond construction of foundations shall take place until 1:2 plan and vertical part section drawings showing the degree to which all window frames will be set back from the brick face of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- 10) No development shall take place until details of the proposed means of surface water drainage have been submitted to and approved in writing by the Local Planning Authority. Upon approval the details shall be implemented as agreed.

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Reason: In the interest of ensuring the development is appropriately drained.

- 11) The brickwork on the front (High Street) elevation of the building hereby permitted shall be laid in Flemish Bond.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- 12) No light fittings, pipework, vents, ducts, flues, meter boxes, alarm boxes, ductwork, satellite dishes, or other appendages shall be fixed to the High Street elevation of the building hereby permitted unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity, and preserving or enhancing the character and appearance of the conservation area.

- 13) The use of the ground floor of the premises hereby permitted shall be restricted to the hours of 09.00 to 22.00 Monday to Saturday, and 10.00 to 21.30 on Sundays and Bank Holidays.

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

- 14) The use of the ground floor of the premises hereby permitted shall not commence until a scheme of soundproofing between the ground floor and the residential units above has been submitted to and approved in writing by the Local Planning Authority. Upon approval the scheme shall be implemented as agreed.

Reason: In the interest of residential amenity.

- 15) Any other conditions recommended by the County Archaeologist.

**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 of the works prior to commencement on site.

2. A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House,

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Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk). Please read our New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link  
<https://beta.southernwater.co.uk/infrastructurecharges>

Due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.

The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).

**THE COUNCIL'S APPROACH TO THIS APPLICATION**

In accordance with 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.

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APPENDIX 2

<b>2.8 REFERENCE NO - 18/501726/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of a 3 storey building comprising of an amusement centre (adult gaming centre) on the ground floor with 2 x single bedroom flats on the upper floors.		
<b>ADDRESS</b> Land Between 119A And 121A High Street, Sittingbourne, Kent, ME10 4AQ.		
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Godden Two LLP <b>AGENT</b> Roger Etchells & Co

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

The Area Planning Officer reported that the Environment Agency (EA) had no objection, subject to standard conditions to secure a preliminary contamination survey of the site, to ensure that protected groundwater was not affected by any

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previously unknown pollution. He sought delegation to approve or refuse subject to the issue of SPA payments being resolved, and the additional conditions requested by the EA.

Mr James Godden, an objector, spoke against the application.

Mr Jeremy Godden, the Applicant, spoke in support of the application.

The Vice-Chairman in-the-Chair invited questions from Members. The Area Planning Officer explained that the comments from the County Archaeologist had been received very late and as such his comments had been reported under paragraph 7.05, and covered by condition (4) in the report, however, the information on the front page of the report had not been updated.

The Ward Member spoke against the application. He referred to a similar application refused in 2012 and considered it should be refused for the same reasons, it was an inappropriate use in the core town centre, and that gambling was already catered for elsewhere in the High Street, and there was no need for an additional one.

The Committee then debated the motion to approve the application, during which the following comments were made: this was infilling a gap, which was overgrown and an eyesore; it did not match, but there was a variety of styles there in any case; could see no reason to refuse the application; there were already gambling establishments in the High Street; this did not enhance the area, and would demonstrably harm the retail area; the design fitted in well; as it was a completely new building, it was not taking over retail space; it added to the mix of the town centre; this could help to increase footfall in the High Street; and should embrace and welcome business into the town centre.

**Resolved: That application 18/501726/FULL be delegated to approve subject to conditions (1) to (15) in the report, and subject to the issue of SPA mitigation payments being resolved.**

<b>2.2 REFERENCE NO - 19/500485/FULL</b>		
<b>APPLICATION PROPOSAL</b> Conversion of garage to kitchen, including new window to replace existing garage door, alterations to roof to match existing rear extension, installation of 2no. roof windows and alterations to rear fenestration.		
<b>ADDRESS</b> 11 The Street Lower Halstow Sittingbourne Kent ME9 7DY		
<b>RECOMMENDATION</b> Approve subject to conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The loss of the garage is acceptable as the driveway at the property is capable of accommodating two vehicles and therefore provides an adequate parking provision.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Lower Halstow	<b>APPLICANT</b> Mrs C Hayward <b>AGENT</b> Mr D Kemp
<b>DECISION DUE DATE</b> 12/04/19	<b>PUBLICITY EXPIRY DATE</b> 27/02/19	

**Planning History**

SW/81/1152 – Outline application for residential development – APPROVED

SW/83/0080 – Approval of reserved matters SW/81/1152 for 6 dwellings - APPROVED

**1. DESCRIPTION OF SITE**

- 1.1 11 The Street is a modern detached, two storey house located within the built up area boundary of Lower Halstow. There is an attached single garage to the west of the site and a driveway to the front of this. This garage is protected by a condition imposed on the original planning permission for the property which ensures the garage is only used for the parking of vehicles unless approved by the Council. There is private amenity space to the rear of the property.
- 1.2 The street scene is primarily residential although the surrounding dwellings are of varying scales and designs. Lower Halstow conservation area lies approximately 15m to the east of the site.

**2. PROPOSAL**

- 2.1 This application seeks planning permission for the conversion of the garage to habitable space with external alterations. This includes the replacement of the garage door with a window, which will measure 2.3m x 1m. The ridge of the garage roof will be lowered by approximately 1m to 3.7m in height in order for it to match the pitched roof of the rear extension at the property and two rooflights will be added (one to the front and one to the rear garage roof slopes). French windows will replace the door in the rear elevation of the garage. Internally, the conversion will allow the garage to be used as a kitchen.

### **3. PLANNING CONSTRAINTS**

- 3.1 The site lies within the setting of Lower Halstow conservation area and the Council has a statutory duty to have regard to the desirability of preserving or enhancing the special character of the conservation area under the Planning (Listed Buildings & Conservation Areas) Act 1990.

### **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Policies CP4, DM14, DM16 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017
- 4.3 Supplementary Planning Guidance (SPG): ‘Designing an Extension: A Guide for Householders’, & “Conservation Areas”.

### **5. LOCAL REPRESENTATIONS**

- 5.1 Three objections have been received from neighbouring properties. Their contents are summarised below:
- Proposal will upset the aesthetic of the building if the pitch of the garage roof is not the same as the house.
  - The wall that will be uncovered after lowering the pitch of the garage roof will be of a substandard finish.
  - The garage wall forms the boundary of the property, the homeowner has no access to it and even with permission from the two joining properties there is no space to carry out the work.
  - No objections to the internal alterations.
  - Works will result in a reduction in off-street parking for the property to only one space - applicant could compensate this loss by constructing additional parking to the front of the property.
  - Parking on ‘The Street’ (a main route through Lower Halstow) can cause extremely hazardous conditions to both vehicles and pedestrians. Subsequently residents and other drivers feel the need to park on the grass verge which is not acceptable and damages the planting on these verges.
  - Where will contractors unload and store building materials and park their vehicles during construction?

### **6. CONSULTATIONS**

- 6.1 Lower Halstow Parish Council objects to the application, on the grounds of loss of a parking space which could lead to vehicles parking on the grass verge or the road to the detriment of other road users and adversely affect the amenity of the surrounding properties.
- 6.2 Natural England make no comments.
- 6.3 KCC Highways and Transportation – The proposal does not meet the criteria to warrant involvement from the Highways Authority.

- 6.4 Environment Health Manager – Recommend hours of construction condition. However taking into account the limited nature of the works, I do not consider this condition would be necessary.

## 7. BACKGROUND PAPERS AND PLANS

- 7.1 Application papers and drawings for 19/500485/FULL and SW/13/1459.

## 8. APPRAISAL

### Principle of Development

- 8.1 The site lies within the built up area boundary of Lower Halstow, where the principle of development is accepted. The main consideration in this case concerns the impact that the loss of the garage as a parking space would have upon the character and appearance of the street scene.

### Visual Impact

- 8.2 With regards to impact upon visual amenity, I note the proposed window is of a similar scale and design as the existing windows on the property and therefore consider it will sit comfortably on the building. The roof ridge will be lowered by roughly 1m, which results in the roof pitch of the garage being lower. I consider this is a minimal change and given the lack of uniform design in the streetscene, I do not believe it will give rise to harm to the character and appearance of the area. I acknowledge the objectors concern about the exposed brickwork and the fact the roof pitch will not match the roof pitch on the main dwelling, however I believe these changes will be acceptable.
- 8.3 The site lies roughly 15m from Lower Halstow conservation area. I consider the minimal external works proposed here will not impact the character and appearance of the nearby conservation area.

### Residential Amenity

- 8.4 The footprint of the garage will not change, and I consider the lowering of the roof ridge on the garage will have no impact upon residential amenity. With regards to any overlooking impact from the new window, I note it will be located on the front elevation of the garage, facing onto the street, and as such I do not believe there would be any adverse impacts to residential amenity.

### Highways

- 8.5 Paragraph 7.0 of the SPG states that *“Extensions or conversion of garages to extra accommodation, which reduce available parking space and increase parking on roads are not likely to be accepted.”*
- 8.6 In this case, the property has four bedrooms, and as such, two off-street parking spaces should be required for a property in this location under current parking standards. The driveway to the front of the garage is 8.5m in length, which is under the KCC Highways minimum required length of 9.6m for two parking spaces in tandem. However, I pay regard to the marginal shortfall in the length of the driveway and consider that it is capable in practice of providing parking for two vehicles, especially

where parking spaces are to be used by members of the same family. This view is supported by an appeal decision for a garage conversion at 9 Saxon Shore, Sittingbourne (ref. SW/13/1459), where the Inspector found that the driveway at that property, which was 8.8m in length, was capable of providing parking for two regular sized vehicles without giving rise to additional on-street parking. A copy of that appeal decision is attached for reference. The situation is almost identical at the current application site, and as such I consider it would be difficult and unreasonable to refuse planning permission in the face of the Inspector's clear reasoning on such proposals.

- 8.7 Taking the above into account, I consider the loss of the garage at the property is acceptable as the driveway is capable of providing the required parking provision for this four bedroom property. Therefore the proposal would be unlikely to lead to additional, unacceptable parking on the road. I acknowledge the Parish Council's and neighbour comments relating to parking. Nevertheless, as the parking provision is adequate, the proposal is acceptable in relation to parking.

### **Other Matters**

- 8.8 An objector mentions the difficulty the applicants will have carrying out the work as the garage forms the boundary of their property. This is not a material planning consideration, being a private legal matter between the relevant parties. Objectors also raise concerns about where construction vehicles will park and store their vehicles. As the development proposed here is small in scale, I do not consider that this will be an issue which causes significant disruption.

## **9. CONCLUSION**

- 9.1 The proposal will not give rise to any unacceptable impacts on residential or visual amenity, and I envisage no impact on the Conservation Area. The loss of the garage will be acceptable as the driveway at the property is capable of accommodating two vehicles and therefore the parking provision is adequate. Consequently, I recommend planning permission is granted.

- 10. RECOMMENDATION – GRANT** Subject to the following conditions:

### **CONDITIONS**

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

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

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

Reason: In the interests of visual amenity.

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

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.



**11 The Street Lower Halstow**  
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UNRECORDED  
UKP J



## Appeal Decision

Site visit made on 10 April 2014

by **Ray Wright** BA(Hons) DipTP MRTPI

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

Decision date: 17 April 2014

PLANNING SERVICES

22 APR 2014

**Appeal Ref: APP/V2255/D/14/2215351**

**9 Saxon Shore, Sittingbourne, Kent ME10 2UP**

- 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 S Coward against the decision of Swale Borough Council.
- The application Ref SW/13/1459 was refused by notice dated 13 January 2014.
- The development proposed is a 'garage conversion.'

### Decision

1. The appeal is allowed and planning permission is granted for a garage conversion at 9 Saxon Shore, Sittingbourne, Kent ME10 2UP in accordance with the terms of the application, Ref SW/13/1459, dated 18 November 2013, subject to the following conditions:
  - 1) The development, hereby permitted, shall begin not later than three years from the date of this decision.
  - 2) The development, hereby permitted, shall be carried out in accordance with the following approved plans: PL 01, PL 02, PL 03, PL 04, and PL 05.
  - 3) The materials to be used in the construction of the external surfaces of the development, hereby permitted, shall match those used in the existing building.

### Main issue

2. The main issue in this case is the effect on the character and appearance of the area.

### Reasons

3. The property is a modern two storey house on an estate, principally consisting of detached and semi-detached dwellings in a variety of different styles and materials. The appeal proposal would involve the conversion of an existing garage to form a dining room with a new frontage replacing the existing garage door.
4. The National Planning Policy Framework (Framework) indicates that there should be a presumption in favour of sustainable development, but confirms that good design is a key aspect of sustainable development. Policies E1, E19 and E24 of the Swale Borough Local Plan 2008 (LP) similarly require development to achieve a high quality design and to reflect the positive

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

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characteristics and features of their locality, with extensions and alterations maintaining the character of the street scene. Some further guidance on preferred car parking arrangements is given in the 'Designing an Extension – A Guide for Householders' (SPG).

5. The properties on the estate exhibit a variety parking and garage arrangements, with different levels of front garden hard standing dependent on their style. The appeal property is located in a cul-de-sac and has a single width front drive to the garage. The Council indicate that the length of the drive does not meet normal standards to enable two cars to be parked on this area. However, there is only a marginal shortfall and the appellant has demonstrated that it is capable of accommodating two regular sized vehicles without encroachment onto the highway. To my mind, with two parking spaces for the dwelling retained, future pressure to reduce the existing front garden to provide extra hard standing, as put forward by the Council, would be limited. Further parking of vehicles immediately outside of the site would also be unlikely in this location, as this would be liable to lead to obstruction to the front parking area of the adjoining property at no 10 Saxon Shore.
6. The Council indicate the area is characterised by some parking to the front of dwellings, together with areas of soft landscaping. I would not disagree with this assessment but do not consider the continued parking of two cars on the front drive of the appeal property would be out of keeping within this part of the estate or that it would be visually detrimental to the street scene.
7. I conclude that the proposal would not materially harm the character and appearance of the area and as such there is no conflict with the Framework or Policies E1, E19 or E24 of the LP or the SPG.

#### **Other Matters**

8. I have been referred to other sites where garages have been converted to living accommodation. However, I do not have full information of these examples and have considered this scheme solely on its individual merits, based on the specific location of the property and the particular site layout involved.

#### **Conclusion**

9. For the reasons given above, I conclude that the appeal should be allowed.

#### **Conditions**

10. The Council have put forward two conditions should this appeal succeed. The standard commencement condition is required. Also to ensure the infill of the garage frontage satisfactorily relates to the existing house, a condition requiring matching materials should be imposed. A condition, referring to the relevant plans, is also required for the avoidance of doubt and in the interests of proper planning.

*Ray Wright*

INSPECTOR

<b>2.3 REFERENCE NO - 18/501428/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of 16 No two-four bedroom dwellings.		
<b>ADDRESS</b> Land Adjoining Bull Lane Bull Lane Boughton Under Blean Kent ME13 9JF		
<b>RECOMMENDATION</b> - Approve, subject to the conditions below and the signing of a suitably worded Section 106 Agreement		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> – The application is allocated in the adopted Local Plan for residential use and would not give rise to any unacceptable impacts upon highway, visual or residential amenities. There are no objections from technical consultees.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> – Parish Council objection.		
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Boughton Under Blean	<b>APPLICANT</b> Mrs Alex Hudson <b>AGENT</b> Kent Design Partnership
<b>DECISION DUE DATE</b> 30/11/2018	<b>PUBLICITY EXPIRY DATE</b> 25/05/18	

**Planning History**

Although there is no planning history associated with the site itself, close to the application site there are two oast houses, known as Westlea Oast and Eastlea Oast which do have relevant planning history as follows:

SW/98/0916 (Westlea Oast, adjacent to application site) - Change of Use from agriculture to two residential units and erection of a block of two double garages. Approved 08/09/1999.

SW/98/0917 (Eastlea Oast, adjacent to application site) - Change of Use from agriculture to two residential units. Erection of two double garages and demolition of modern framed buildings. Approved 21/04/1999.

**1.0 DESCRIPTION OF SITE**

1.1 The application site measures approximately 0.5 hectares in size and sits adjacent to Bull Lane which lies immediately to the west. The site slopes gently upwards from north to south and Bull Lane sits approximately 2m lower than the application site. The site lies approximately 30m above ordnance datum. Access to the site is provided from the access road which passes to the north of Eastlea Oast and adjoins Bull Lane.

1.2 The site is predominately comprised of unmanaged grassland, however, a row of Poplar trees are situated close to the boundary with Bull Lane. In addition to this, two large Poplar trees are located just outside of the western boundary of the site. None of the trees within or close to the application site are subject to a TPO. Close to the northern part of the application site lies two converted oast houses (as referenced in the history section above) and beyond this farmland.

- 1.3 To the south of the application site are a number of two storey post war residential properties in The Charltons. To the east of the application site lies a recreation ground which includes the village hall.
- 1.4 Public Footpath ZR607 is located partly within the site, close to the eastern boundary. This provides access to The Charltons and to local amenities and facilities beyond this.

## **2.0 PROPOSAL**

- 2.1 This application seeks planning permission for the erection of 16 dwellings. 40% (7) of the dwellings will be affordable. 6 of the 7 affordable units will be provided as affordable rent with 1 as shared ownership with the overall mix as follows:  
2 bed – 10 (4 affordable);  
3 bed – 4 (2 affordable)  
4 bed – 2 (1 affordable)
- 2.3 The properties will be two storey in height with a mixture of pitched and hipped roofs. The dwellings are arranged as a flat over parking spaces, two small terraces, semi detached and two detached properties. The development provides a total of 36 parking spaces.
- 2.4 The design of the properties is bespoke. In general the appearance pays attention to the surrounding pattern of rural Kentish vernacular although in some instances includes features such as larger sections of glazing and ‘Juliet’ balconies to give the design a contemporary twist. The proposed materials are comprised of red multi stock brick, slate and clay tiles, black weatherboarding and clay hung tiles.
- 2.5 Facing Bull Lane will be the front elevation of four properties, a single storey parking barn and the side elevation of a dwelling. This will require the removal of a number of the trees that are currently located along this boundary. The trees in question are approximately 8m in height and have been surveyed as having major stem decay with a number containing prolific ivy. Internally, an access road will be provided which a number of the properties will front onto. In the south eastern part of the development three of the dwellings will face onto the public footpath and beyond this the recreation ground.

## **3.0 PLANNING CONSTRAINTS**

- 3.1 Public Right of Way – ZR607

## **4.0 POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF): Paras 7, 8, 11 (sustainable development); 34 (developer contributions); 62 (affordable housing); 67 (identifying land for homes); 73 (maintaining a supply of housing sites); 78 (sustainable development in rural areas); 98 (public rights of way); 102 (transport); 127 (achieving well designed places); 165 (sustainable drainage systems); 170 (local and natural environment); 175 (biodiversity).
- 4.2 National Planning Practice Guidance (NPPG): Air Quality; Design; Determining a planning application; Natural Environment; Open space, sports and recreation facilities, public rights of way and local green space; Planning obligations; Rural housing; Travel Plans, Transport Assessments and Statements; Use of planning conditions.

- 4.3 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies ST 1 Delivering sustainable development in Swale; ST 2 Development targets for jobs and homes 2014-2031; ST3 (The Swale settlement strategy); ST 4 (Meeting the Local Plan development targets); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); DM7 (Vehicle parking); DM8 (Affordable housing); DM14 (General development criteria); DM17 (Open space, sports and recreation provision); DM19 (Sustainable design and construction); DM21 (Water, flooding and drainage); DM24 (Conserving and enhancing valued landscapes); DM29 (Woodlands, trees and hedges) A21 (Smaller allocations as extensions to settlements).

For clarity, Policy A21 sets out the following expectations in relation to this site:

*“Through an integrated landscape strategy, create a new attractive village edge and achieve its integration within adjacent open landscapes with substantial landscape and good built design that minimises visual impact on local landscape designation.”*

- 4.4 Supplementary Planning Guidance (SPG): Developer Contributions November 2009

## 5.0 LOCAL REPRESENTATIONS

- 5.1 Letters of objection have been received from 14 separate addresses and raise the following summarised concerns:
- The proposed development will overshadow the public footpath and cause it to become waterlogged;
  - The proposed dwellings will give rise to overlooking and a loss of privacy for the occupiers of the adjacent dwellings and give rise to a loss of light;
  - The access to the development from Bull Lane is on a private road which is in a poor state of repair;
  - The access to the site should be provided further to the south;
  - Construction vehicles would have difficulty in accessing the site;
  - The proposal would have a harmful impact upon highway safety and give rise to congestion on surrounding roads that are already over capacity;
  - The surrounding road surface is in a poor state of repair;
  - The proposal will have a detrimental impact upon air quality;
  - The drainage in Bull Lane is inadequate;
  - The access to the development should be controlled by traffic lights as there is insufficient visibility;
  - Protected trees would be impacted upon by this proposal;
  - The proposal will have a detrimental impact upon the environment;
  - The development will create noise pollution;
  - The design of the dwellings would not be in keeping with the surrounding built form which includes the converted oast houses;
  - The private and affordable dwellings can be differentiated by the design quality;
  - The loss of trees adjacent to Bull Lane is unnecessary and detrimental to the visual impact of the area;
  - There is not enough open space within the development;
  - There are protected species on the site;
  - The development could influence surrounding property prices;
  - Who will be responsible for the maintenance of the carports;
  - Is a footpath to Bull Lane intended?;
  - Events at the village hall create parking overspill onto the surrounding roads and restrict the access road;
  - The electricity supply to the existing oast houses passes through the site;
  - The existing parking area for Eastlea Oast will become a passing area for traffic;
  - The proposal is contrary to the site specific requirements set out in the Local Plan;

- The density of the development is too high / number of dwellings should be reduced;
- The site lies within a conservation area and a number of restrictions were placed on the oast houses when they were converted;
- The proposal would disrupt existing views that residents of surrounding properties currently enjoy;
- There is no need for this site to be developed for residential properties as there is planning permission for 196 dwellings at Lady Dane Farm in Faversham;
- There needs to be mitigation in place so that parking does not occur on Bull Lane;
- There is no indication of the lighting strategy for the development;

5.2 I have also received correspondence from the Faversham Society, making the following points:

- The views of KCC Highways in raising concern regarding the access to the site and the requirement for a Transport Statement is agreed with;
- Accept that the site is identified in the Local Plan for development and that the number of units is as recommended;
- The level of provision of affordable housing is welcomed and in accordance with the Local Plan;
- There is a footpath running through the site which is not shown on the existing plan and if any alteration is proposed to the footpath then an application should be made for its diversion. This route should be easy to follow and clearly signposted.

## 6.0 CONSULTATIONS

6.1 **Boughton under Blean Parish Council** – object to the proposal on the following grounds:

- The access road from Bull Lane to the site is a private road. It is believed that the application is split into two separate plots in terms of land ownership with only one of these allowing access over the private road;
- There is no information as to how the access road will be maintained. If permission is granted then the roads should be adopted and maintained by the Local Planning Authority;
- The access to the development is not suitable for the proposed number of properties and would give rise to further congestion as it is already used by the residents of Eastlea Oast, School, Pre-School, Village Hall, Recreation Ground users and Bounds Farm;
- There is no contingency for additional parking and there is concern that the additional vehicles would attempt to park at the recreation ground. Bull Lane is too narrow to park along;
- The visibility splay at the junction of the access road and Bull Lane is limited and the road is not wide enough for multiple vehicles to pass in / out. The ability for construction traffic, services and emergency vehicles to use this access is questionable. There is no suitable passing area on the private stretch of road;
- The proposed housing scheme is not in keeping with the surrounding environment and the existing oast houses. The proposed dwellings close to Eastlea Oast should be reduced in scale;
- The details do not show enough vegetation around the perimeter of the development. A view of rear boundary treatment from the recreation ground is not suitable;

- The Parish Council are not against development upon this site but consider that a smaller development with access off Bull Lane would potentially be more acceptable;
- If planning permission is granted, then the Parish Council request that construction traffic be limited to movements outside of school drop off / pick up times.

- 6.2 **KCC Public Rights of Way (PROW) Officer** – Originally commented setting out that the proposed development directly affects public footpath ZR607. The application as originally submitted made no reference to the public footpath and as such an objection was raised. Further to this, amended details were submitted which altered the layout of the development in order to retain the alignment of the footpath. Upon re-consulting the PROW Officer, on the basis of the revised drawing the objection to the proposal was withdrawn.
- 6.3 **SBC Environmental Protection Team** – In respect of air quality and noise, although the site is located relatively close to the A2 and Thanet Way (A299), it is considered that the distance from them is far enough as to not warrant any further investigations in the form of assessments. There is no mention in the submission regarding the possibility of land contamination although due to the nature of the site and the proximity to agricultural land this matter should be investigated. Therefore, subject to the imposition of a condition to deal with the potential for contaminated land, no objection is raised on environmental health grounds.
- 6.4 **Southern Water** recommend that if the application is approved then a condition is included requiring the proposed means of foul and surface water sewerage disposal and an informative relating to connection to the public sewerage system.
- 6.5 **Lead Local Flood Authority (KCC)** – Originally responded stating that *“Ground investigations undertaken at the entrance to the site showed low infiltration rates at the trial pit, we would recommend that the drainage calculations are remodelled using the infiltration rate obtained from the trial pit. This is to show that the drainage system proposed works as intended and each soakaway has a suitable half drain time. As the application is for full planning permission, it must be demonstrated that adequate drainage can be accommodated within the proposed layout. We therefore recommend that the application is not determined until this information has been submitted for review.”*

Further to this, additional drainage details were provided included updated drainage calculations and KCC are satisfied with the drainage strategy at present. Additional ground investigations would be necessary but it is considered that this can be dealt with via pre commencement conditions to ensure that the proposed drainage strategy is suitable to manage surface water for the site and to not increase the risk of surface water flooding. No objection is raised subject to conditions relating to a sustainable surface water drainage scheme, a verification report and details of infiltration.

- 6.6 **SBC Greenspaces Manager** states that due to the location of the adjacent recreation ground it is not possible to justify on-site open space. Therefore a contribution is sought towards improvements to the recreation ground of £446 per dwelling.
- 6.7 **Natural England** state that *“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 of the development on the site(s) and that the proposal should not result in a likely significant effect.”*

- 6.8 **Kent Police** comment that they have discussed crime prevention methods with the applicant which relates to boundary treatment, surveillance, increasing opportunities for overlooking, the lighting plan and the use of defensive planting. Recommend a condition is imposed if the application is approved to ensure that crime prevention is fully dealt with.
- 6.9 **Swale Footpath Group** refer to the comments raised by the KCC PROW Officer.
- 6.10 **KCC Developer Contributions** request that £48.02 per dwelling (total £768.25) towards additional bookstock at Boughton under Blean library. They also comment that *“Whilst Kent County Council Education Authority can demonstrate a forecast lack of provision caused by this development which will require school expansions, due to the CIL reg 123 pooling restriction the County Council can now not collect contributions from every development.”* As a result no contribution is requested from this development towards these facilities.
- 6.11 **KCC Ecology** initially commented as follows:  
*“We have reviewed the ecological information which has been submitted with the planning application and we advise that additional information is required prior to determination of the planning application :*
- *Additional information on calcareous grassland habitat on site (if present);*
  - *Reptile survey;*
  - *Bat scoping survey on all the trees to be lost by the proposed development; and any recommended bat surveys and mitigation (if required).”*

Further to the above comments a reptile survey was undertaken and I re-consulted with KCC Ecology who again stated that additional information on calcareous grassland habitat on site (if present) is required along with bat scoping survey on all the trees to be lost by the proposed development. These comments lead to a Preliminary Tree Roost Assessment being submitted along with a Habitat Appraisal Survey Report. Upon re-consulting with KCC Ecology it was considered that further information on calcareous grassland habitat on site (if present) was still required, in addition to a dusk emergence/dawn re-entry bat survey and mitigation (if required). Upon the receipt of additional information which included an amended tree roost assessment and ecological habitat appraisal I again re-consulted KCC Ecology who made the following comments.

Firstly, on the basis of the additional information the conclusion that the site does not contain calcareous grassland is accepted. In respect of bats, all of the trees that have potential to support bat roosting are being retained and therefore a condition is recommended which secures the protection of these trees (and other retained trees and hedgerows) during construction work. Furthermore, a condition requiring a lighting strategy for biodiversity is recommended. It is accepted that there are no reptiles or amphibians on the site and as such no mitigation is required in regards to these. It is recommended that the protection of retained habitats is included in the Construction Management Plan.

The site is within 3.2km of Special Protection Areas (SPA) and Wetlands of International Importance under the Ramsar Convention (RAMSAR sites) and there is a need to contribute to the North Kent Strategic Access Management and Monitoring Strategy (SAMMS). However, in addition to this an ‘appropriate assessment’ is needed under the Habitats Directive.

Finally, ecological enhancements need to be over and above mitigation measures and therefore further bird and bat boxes are required, along with a generous native planting scheme. A condition on this basis is recommended. Subject to the conditions suggested KCC Ecology raise no objection.

- 6.12 **KCC Highways & Transportation** initially responded requiring a Transport Assessment to be carried out to assess the existing and projected traffic movements at the junction with Bull Lane. In addition the Transport Assessment is required to confirm an adequate visibility splay at the junction. Furthermore, amendments were suggested in respect of the width of the access road (within the site), visibility of cars exiting car ports, a swept path analysis showing a refuse freighter accessing and exiting the site (and turning within the site). Required details of cycle parking provision and that provision should be made for electric charging points.

The above comments led to the submission of a Transport Assessment. Upon re-consultation, KCC Highways & Transportation were satisfied with the findings of the assessment in relation to the speeds along Bull Lane and the determined visibility splays. In addition, the number of additional vehicle movements, equating to approximately one every 8 minutes during peak hours, is not considered to represent a detrimental impact compared to the existing usage of Bull Lane. However, the requirement for the access road within the site to be increased to 4.8m in width for at least 12m - so that there can be two way vehicle movement to prevent any unnecessary waiting on the access road outside of the site leading to Bull Lane was reiterated. The original point regarding electric vehicle charging points was also repeated. Furthermore, there is concern regarding the potential for residents of plots 12-14 to park directly outside their properties on Bull Lane. The result of this would narrow the carriageway to such a degree that it would be to the detriment of highway safety. As a result physical measures should be introduced to prevent this. Finally, it is considered that the footpath that links to the southeast of the site should be surfaced to enable a safer and more convenient form of pedestrian access.

Due to the above comments, further amendments and clarification was received which shows an increased access width, the installation of bollards on Bull Lane, clarification that the existing footpath will be surfaced and refuse vehicle tracking. On this basis I again consulted KCC Highways & Transportation who consider the above amendments to be satisfactory. The acceptability of the limited increase in the use of the access which links the site to Bull Lane has been reiterated, as has the visibility splay at the junction with this road and Bull Lane. On this basis, no objection is raised subject to a conditions requiring a construction management plan; provision for the footpath improvements; provision and permanent retention of the car parking spaces; provision and permanent retention of the vehicle loading/unloading and turning facilities prior to the use of the site commencing; provision and permanent retention of covered cycle parking facilities; and provision and permanent retention of vehicle charging facilities.

- 6.13 **Canterbury & Coastal CCG** have confirmed that they will not be seeking contributions from this development.
- 6.14 **SBC Strategic Housing and Health Manager** has confirmed that the requirement for affordable housing on this site is 40% which equates to 7 units. The tenure split should be 90% affordable rent and 10% shared ownership. Upon receipt of the original application where 5no. 2 bed units and 2 no. 3 bed units were proposed as being affordable, it was requested that the mix was more closely aligned with the private mix. As such, an amendment was made to the mix to provide 4no. 2 bed units, 2 no. 3 bed units and 1no. 4 bed units, with the 4 bed unit being shared ownership and

the remainder affordable rent. This amended mix and tenure split has been accepted by the Strategic Housing and Health Manager.

- 6.15 **UK Power Networks** have confirmed that they do not make comments on applications where the overhead power line is affected and would require developers to make contact with themselves if lines were required to be diverted.

## 7.0 BACKGROUND PAPERS AND PLANS

- 7.1 The application has been supported by a number of documents including the following:

- Proposed floorplans and elevations;
- Streetscenes;
- Block Plan;
- Flood Risk and Drainage Strategy;
- Habitat Appraisal;
- Tree Survey;
- Reptile Survey;
- Transport Assessment.

## 8.0 APPRAISAL

### Principle of Development

- 8.1 The application site is allocated in the adopted Local Plan under policy A21 for a minimum of 16 dwellings and is situated within the built up area boundary. The proposal would provide 16 dwellings which would contribute towards the Council's housing supply on a site which is specifically allocated for this type of development. To reach the point whereby the site has been allocated in the Local Plan it has gone through a rigorous selection process and has been independently assessed by a Planning Inspector, reaching the opinion that it is suitable for residential development. In addition to this, it is also relevant to consider that the Council is unable to currently demonstrate a 5-year supply of housing land. As such, in my view this means that even greater weight should be given towards the suitability of this site for housing. On this basis I am of the very firm that the principle of this development upon this site is accepted.

### The quantum of housing and mix of units

- 8.2 As set out above, the proposal seeks planning permission for 16 dwellings – which is the minimum number of dwellings that Local Plan envisaged for the site - on a site of 0.5 hectares. This equates to a density of 32 dwellings per hectare. The site is to comprise a new edge to the built up area before opening out into the rural landscape to the north. In regards to national and local policy, the NPPF (paragraph 122) states that *'decisions should support development that makes efficient use of land, taking into account'*, amongst other matters, *'the desirability of maintaining an area's prevailing character and setting'*. Furthermore, Local Plan policy CP3 states that proposals will *"Use densities determined by the context and the defining characteristics of the area"*. In my view, the quantum of dwellings, which produces the density of the development, is the lowest that policy A19 sets out should be provided on this site. As such, in the context of the site, which is located adjacent to the open countryside I take the view that this is an appropriate scale of development and is compliant with the NPPF and Local Plan in this regard.
- 8.3 The overall aim of policy CP3 is to deliver a wide choice of high quality homes. In this case, the majority of the properties, 10 out of 16 (63%) are proposed to be 2 bed units.

The Local Plan sets out that 36% of dwellings should be 2 bedroom, however, it is also clear that this is a starting point and site specifics could lead to a different mix being acceptable. In this case, I again refer to the location of the site, creating a new built up edge to the village. As a result, the higher number of smaller units means that there is less built footprint and a smaller need for associated land uses such as car parking. As a result, this enables the scheme to, in my view, sit more comfortably in its context (which will be explored in more detail below) and as a result I believe this to be acceptable.

### **Visual Impact, landscaping and impact upon valued landscapes**

8.4 The site is abutted to the south by two-storey semi-detached properties in The Charltons whilst the residential properties known as Eastlea Oast and Westlea Oast are sited to the north and north-west. At the current time, due to the undeveloped nature of the site, when approaching from the north along Bull Lane the properties in The Charltons currently mark the point where the countryside ends and the built-up area begins. The result of the site's location is that built form on this land will provide a new definition of the start of the built-up area.

8.5 The application site lies within an area of high landscape value (Swale Level) and as such the proposal is required to be considered in terms of policy DM24 which states that Areas of High Landscape Value (Kent and Swale Level) are designated as being of significance to Kent or Swale respectively, where planning permission will be granted subject to the:

1. conservation and enhancement of the landscape being demonstrated;
2. avoidance, minimisation and mitigation of adverse landscape impacts as appropriate and,

when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh harm to the Kent or Swale level landscape value of the designation concerned. In addition to this, policy A21 of the Local Plan specifically references this site and sets out the following requirement:

*“Through an integrated landscape strategy, create a new attractive village edge and achieve its integration within adjacent open landscapes with substantial landscape and good built design that minimises visual impact on local landscape designation.”*

8.6 In the first instance, I give significant weight to the allocation of the site in the Local Plan for residential use. As a result of this, it has been accepted in principle that the site in visual terms will alter quite significantly. In addition, and as set out above, the application proposes 16 dwellings, which is the minimum number which would be accepted on this site and a higher number of smaller units. In the context of the location of the site within an area of high landscape I take the view that this will help to mitigate against adverse landscape impacts.

8.7 Having said the above, regardless of the number of units, a key consideration in this case is the design of the properties and how they will relate to their surroundings. This is an issue picked up on more than one occasion in the neighbour representations. The two oast houses previously referred to are in very close proximity to the site and in my view have architectural merit. As the dwellings upon this site will have a close relationship with these properties their design is of fundamental importance.

8.8 In an overall sense, I consider that the design of the properties has been well considered. The dwellings are of a bespoke design, although, as the Design & Access Statement sets out, design cues and the proposed use of materials have been taken

from existing built form within Boughton. Additionally, in design terms, the proposed dwellings have not attempted to compete with the oast houses. Any effort to do so would in my view have the potential to become too much of a pastiche of historic types that are impossible to authentically reproduce. As such, the approach that has been put forward is in my opinion appropriate and will allow for the oast houses, and the development itself, to be appreciated in their own right whilst sitting comfortably alongside one another.

- 8.9 A key issue in terms of the success of this scheme from a visual perspective will be the careful selection of materials. The Design & Access Statement sets out that the external facing materials will be comprised of red multi-stock brick, slate and clay tiles, black weatherboarding and clay hung tiles. I am of the opinion that these are broadly acceptable. However, I do not have the details of the exact variants that are proposed. As such, to ensure this is dealt with appropriately I have recommended a condition requiring details of the materials to be provided.
- 8.10 I also note that concern has been raised locally that the units sitting closest to the oast houses (no.s 12-15), due to their scale, do not allow for Eastlea Oast to the north of the site to be fully appreciated. The ridgeline of these proposed properties sits approximately 1.5m above Eastlea Oast. However, I take into account that the application site also sits approximately 1.5m above the level of Bull Lane. However, of fundamental importance is that along the Bull Lane frontage there is a 12m gap between the closest proposed property and Eastlea Oast. In addition, the hipped roof of this proposed property slopes away from Eastlea Oast and as such, taking the above into account I do not believe that the proposal would dominate or unacceptably harm the setting of Eastlea Oast.
- 8.11 A further requirement in order satisfy the aims of policy A21 is for a substantial landscaping scheme. An indicative landscape proposal has been provided which shows planting along the Bull Lane frontage and the retention of a number of trees around the perimeter of the site. In addition, indicative planting within the site is proposed. I recognise that planting already exists along the margin of the site close to Bull Lane which is proposed to be removed and that local concern has been raised in respect of this. However, I give weight to the Arboricultural Report which has been submitted which considers these trees to be in poor condition with stem decay and severe ivy. As such, although for arboricultural reasons there is convincing evidence to remove these trees, I agree that there will be an impact from a visual perspective. However, the site layout clearly shows indicative replacement planting in this location and I am of the view that successful replacement planting can be provided. On this basis I have recommended an appropriate landscaping condition to ensure that this is dealt with appropriately.
- 8.12 Further to the above, I do have some concern that due to the proximity of two large Poplar trees which lie close to but outside of the eastern boundary of the application site that their long term health could potentially be compromised. The reason for this is that due to the amount of overhang of the rear garden of plot 1 there is potential for residents to wish to cut these trees back to the boundary. This could have knock on effects for the longer term health of these trees. However, I am of the view that as the site as a whole is relatively restricted in terms of being able to provide the policy compliant required number of units I consider that it is acceptable for this plot to be retained in its current location. However, to mitigate against the possibility of the future issues with these trees, I am seeking some compensatory planting elsewhere on the site. I have discussed this with the agent who has given their general agreement and has agreed to a

condition in respect of this. As such, due to only indicative landscaping details being provided at this stage, as set out above I have recommended a condition requiring detailed landscaping proposals is imposed. As a result I am confident that a landscaping scheme can be provided which will help to mitigate landscape impacts.

- 8.13 A further contributory factor to the success or otherwise of the development will be the boundary treatments. Due to the layout of the site, the rear of units 1-3 will be visible from the recreation ground and in longer range views from the east. There is the potential that if these rear boundaries are not treated sensitively then this could have a detrimental impact upon visual amenities. No details of boundary treatments have been provided and as such I have recommended a condition requiring these so that this can be dealt with appropriately.
- 8.14 Internally within the site itself I am of the view that the layout works well with active frontages overlooking the internal access road and surveillance of the parking areas. Overall I consider that the dwellings have been well designed within their context and display good planning principles such as dwellings positively engaging with Bull Lane. I believe that through the careful choice of materials, a well considered landscape approach and the appropriate choice of boundary treatments that the proposal will not give rise to any significant harm to this designated landscape or visual amenities.
- 8.15 I have also made an assessment of the scheme against Building for Life 12 (as agreed by the Local Plan Panel on 25.04.18), and consider that it scores well in terms of this. My assessment is appended.

#### **Impact upon residential amenities**

- 8.16 As set out above, there are existing residential properties located to the north and north-east of the site in the form of the converted oast houses and to the south with the properties in The Charltons. Concern has been raised by neighbours in respect of the impact that the proposal would have upon residential amenities which I will discuss as follows.
- 8.17 To the south, the closest properties to the application site in The Charltons (No.s 2, 4, 6, 8, 10, 12) have their rear elevation facing towards the application site. However, these properties all benefit from generous rear gardens, the shortest of which is approximately 20m long. As such, when the 10m rear gardens which serve the proposed units facing these properties are taken into consideration, a rear to rear distance comfortably in excess of the Council's minimum standard of 21m is achieved. One of the proposed properties has its flank elevation facing towards No.12 The Charltons, however, these properties would be separated by a gap of 25m. The Council usually expects a minimum flank to rear separation distance of 11m and as such, again, I consider this relationship to be wholly acceptable. As such I believe the residential amenities of both existing and potential occupiers in the southern part of the site would not be significantly harmed.
- 8.18 As stated above, the gap between Eastlea Oast and the closest proposed property (unit 15) is 12m. However, as both of these properties front Bull Lane I do not believe that this relationship would give rise to any serious harm to the amenities of the existing occupiers. I do note that unit 16 has available rearward views towards the rear private amenity space of Eastlea Oast. However, the distance into the central part of the garden is approximately 26m. In addition, there is a proposed car port which would disrupt this view. As such, I consider this relationship to be acceptable.

- 8.19 In respect of Westlea Oast on the opposite side of Bull Lane, this is separated from the closest proposed units by approximately 22m. The relationship between these existing and proposed properties, with dwellings facing each other on opposite sides of the highway is entirely typical. Although I appreciate that the application site is raised above Bull Lane by approximately 1.5m I do not believe that this element of the layout could be considered as being unacceptably harmful in terms of giving rise to opportunities for overlooking or a loss of light. In addition, I also note that a large proportion of the private amenity space related to No.2 Westlea Oast is situated to the side of the property. As a result, views into this area will be able to be achieved from the proposed units 12-15. However, due to the depth of the garden and that a proportion of it appears to wrap around the rear of the property, there will still be areas that are screened from view and other areas towards the rear of the private amenity space which will be 50-60m away from the closest proposed property. As such I am of the opinion that the proposal would not give rise to a significant loss of privacy in this regard.
- 8.20 In relation to the residential amenity of the future occupiers, the site has been arranged internally so that there are limited opportunities for overlooking. Having said this, there are sideways views from the rear of unit 6 into the private amenity space of unit 7 and from the rear of unit 14 and 15 into the rear private amenity space of unit 16. In the above instances, the distances are approximately 15m into the central part of the rear private amenity space. As a result, as these views are from the side I consider on balance that these relationships would not give rise to unacceptable harm in terms of overlooking or a loss of privacy.
- 8.21 I have also taken into consideration that the closest existing residential property to the application site, No.2 Eastlea Oast, has a first floor balcony upon its rear elevation. This would allow for elevated sideways views into the rear private amenity space of proposed unit 15 from a distance of approximately 16m. However, as this is a marginally less harmful relationship than the separation distances as described in the paragraph above, I therefore, on balance, consider this to be acceptable.
- 8.22 Aside from 1 of the units, the dwellings all have a minimum garden depth of 10m which I consider to provide adequate outside amenity space. The unit which does not benefit from any outside private amenity space is unit 11. This unit is comprised of two bedrooms and is located over parking spaces. In considering whether this is acceptable I give significant weight to the location of the adjacent public open space which is situated approximately 50m away from this unit. In addition, I take into account that in terms of floorarea this is the smallest unit on the site and the most likely to contain the least number of occupants. As such, in this case I take the view that the amenity of the future occupants of this dwelling would not be so significantly harmed as to create an unacceptable impact.
- 8.23 I do recognise that there is the potential for construction works, if carried out at unsociable hours, to cause to harm residential amenities. Therefore I have requested a condition which controls construction hours. On the basis of the above I do not believe that the proposal would give rise to unacceptable harm to residential amenities.

#### **Highway safety and amenity**

- 8.24 As set out above, a number of comments from neighbours relate to highway capacity, safety and amenity in the area close to the application site. As also included above, the proposal has been considered in detail by KCC Highways & Transportation.

- 8.25 Access to the site would be obtained from the access road which leads from Bull Lane. This road currently serves the parking area of Eastlea Oast, the recreation ground, the village hall, the primary school and farmland to the north of the application site. During the course of the application, a Transport Assessment has been provided and KCC Highways & Transportation have accepted the conclusions in respect of the additional traffic movements that would be generated by this development. In summary, the conclusion has been drawn that due to the relatively modest scale of the development, the limited increased usage of the surrounding road network is unlikely to significantly increase congestion.
- 8.26 The Transport Assessment has also considered the visibility at the junction with Bull Lane. This junction, due to the facilities that it currently serves is already relatively well used, with the region of 124 vehicle movements associated with the Primary School in the morning and afternoon peak. The proposed dwellings are expected to generate around 7 vehicle movements in the morning peak and another 7 in the evening peak. There is no accident record at the junction with Bull Lane to suggest that there are currently any issues with its operation and in addition to this the surveys along Bull Lane have demonstrated relatively low vehicle speeds. Therefore it appears that road users naturally take the required level of care at the junction in order to negotiate it in a safe manner.
- 8.27 KCC Highways & Transportation are aware that the visibility splay that has been demonstrated does cross third party land (Eastlea Oast) and as such I do have some concern that there is not total control in terms of how this piece of land is dealt with in future. However, as noted by KCC Highways & Transportation, it is important to consider that this is the existing situation for vehicles that currently use this junction, which includes the residents of Eastlea Oast themselves. In addition to this, I take into consideration condition 18 of planning permission SW/98/917 which granted approval for the conversion of the oast house. This condition sets out that no gates, walls, fences or other means of enclosure shall be constructed without the prior written approval of the Local Planning Authority. As such, if an application was made for such works (that could impact upon the visibility at this junction) then the Council would have control over whether it was approved. I do appreciate that this does not preclude something being installed which did not fall under the description of development (and as such wouldn't require consent from the Council). However, I give weight to the fact that the junction and the visibility is, as set out above, as existing and already provides access to a number of services and facilities. In addition, KCC Highways & Transportation consider that the visibility splay as indicated in the Transport Assessment is actually a little greater than what would be required and as such this would further reduce the margin by which the splay crosses third party land. For the above reasons KCC Highways & Transportation are content that the visibility at the junction is acceptable.
- 8.28 In respect of the access to the site, I also note the comments of the Parish Council insofar as there is uncertainty over the rights of access and the ownership of the road that links the site to Bull Lane. I have discussed this with the agent who has provided me with the ownership certificates of the application site (the site is split into two separate titles but are both in the applicant's ownership). In summary, the rights of one of the titles allows access over the section of highway which links the site to Bull Lane. Therefore, as the entirety of the site is within the ownership of the applicant it would in my view be extremely unlikely that these rights weren't also afforded to the second parcel of land (i.e. the applicant would be unlikely to sterilise access to their own site). As such, notwithstanding that this would be a private legal matter outside of the planning process I do not consider that this would be likely to cause a barrier to future occupants being able to access the wider highway network from the application site.

- 8.29 There has also been discussion regarding the possibility of future occupants of units 12-15 parking in Bull Lane, close to the frontage of their properties. KCC Highways & Transportation were initially of the view that bollards would be required upon Bull Lane to prevent this from happening as the width of Bull Lane is restricted. As a result, an amended drawing was submitted indicating bollards and which KCC Highways & Transportation considered acceptable. However, KCC Highways & Transportation have, since this time, re-considered their position. They are now of the view that if appropriate boundary treatment and planting was provided along the Bull Lane frontage within the application site then this would dissuade occupants of units 12-15 from accessing their properties on foot directly from Bull Lane. This would mean that parking in this location would be unlikely to occur as it would be more convenient to park in the designated spaces within the development. I am of the view that there is sufficient room in the area to the front of units 12-15 to allow for sufficient planting and boundary treatment. Therefore I consider that this can be adequately dealt with via the conditions relating to landscaping and boundary treatments as discussed above. In addition to this, in the area to the front of unit 15, there appears to be a potential pedestrian link that would only provide access into a privately owned parcel of land. As such, I believe that the condition requiring boundary treatment details can also be used to provide a robust enough barrier in this location to make this unusable.
- 8.30 In respect of parking numbers (36 spaces), KCC Highways & Transportation are of the view that their guidance is complied with. In addition, the access within the site has been widened to 4.8m. This allows for two vehicles to pass one another and means that additional waiting on the access road linking the site to Bull Lane would be mitigated.
- 8.31 Overall, I note that KCC Highways & Transportation raise no objection subject to a number of conditions which I have recommended below. On this basis and for the reasons set out above, I take the view that the impact upon highway capacity, safety and amenity would not be unacceptable.

### **Developer Contributions**

- 8.32 Members will note from the consultation responses received above that in line with normal procedures for a development of this size, it would generate a requirement for financial contributions to deal with additional demand on local infrastructure. The contributions requested are as follow:
- KCC Libraries - £48.02 per dwelling - £768.32
  - Off Site Play – £446 per dwelling - £7,136
  - Refuse - £101 per dwelling – £1,616
  - SPA Mitigation - £239.61 per dwelling - £3,833.76
  - Administration and Monitoring fee – £667.70
  - Total = £14,021.78
- 8.33 The applicant has agreed to pay these contributions. Members will note that there is no contribution requested for education or healthcare facilities. Both KCC and the CCG (Canterbury and Coastal) were consulted, however, they have confirmed that they would not be seeking a contribution from this development. In terms of the above contributions I am of the view that a Section 106 Agreement is the best mechanism for addressing the SAMM contribution, the details of which are set out under the subheading '*The Conservation of Habitats and Species Regulations 2017*'.

### **Affordable Housing**

8.34 For applications proposing 11 dwellings or more, Policy DM8 of the adopted Local Plan states that in 'all other rural areas', where this application site is located, 40% of the dwellings should be affordable. This equates to 7 dwellings in this case. The Local Plan also sets out that the target for the tenure split of the affordable units will be 90% affordable rent and 10% intermediate products (usually shared ownership). In this case the applicant has agreed to provide 7 units as affordable, with 6 of these as affordable rented units and 1 as shared ownership. Initially, the application proposed the following mix of affordable dwellings – 5no. 2 bed and 2no. 3 bed. Upon consulting with the Council's Strategic Housing and Health Manager it was suggested that the mix be amended to more closely align with the mix of the private units. Further to this, the agent proposed the affordable units to be split as 4 x 2 bed, 2 x 3 bed and 1 x 4 bed. The 2 and 3 bed units were proposed to be provided as affordable rent and the 4 bed unit as shared ownership. I re-consulted with the Council's Strategic Housing and Health Manager who has accepted the proposed mix and tenure split. On this basis I am of the view that the proposal would be compliant with Policy DM8 of the Local Plan and the 7 affordable units would go towards meeting an identified need.

### **Drainage and Contamination**

8.35 In regards to drainage, a Flood Risk Assessment and Drainage Strategy was originally submitted in support of the application. As set out in the consultation section above, the Lead Local Flood Authority (KCC) required further information to demonstrate that adequate drainage can be accommodated within the proposed layout. Further information in the form of updated drainage calculations was submitted and this led to the Lead Local Flood Authority confirming that they were satisfied with the drainage strategy. Further details would be required, some of which would be necessary prior to the commencement of the development, however the Lead Local Flood Authority take the view that this can be adequately dealt with via condition. On this basis no objection is raised subject to the imposition of these conditions that I have recommended.

8.36 Southern Water have requested a condition requiring details of the means of foul sewerage and surface water disposal. I have recommended that this condition is amended to remove reference to surface water disposal as this is dealt with under conditions recommended by the Lead Local Flood Authority and believe that this adequately deals with this issue.

8.37 I have consulted with the Council's Environmental Protection Team Leader. In respect of air quality and noise, although the site is located relatively close to the A2 and Thanet Way it is considered that the distance is far enough as to not warrant any further investigations in the form of assessments. However, there is no mention in the submission regarding the possibility of land contamination on the site. Therefore, due to the nature of the site and the proximity to agricultural land this matter should be investigated. As such, subject to the imposition of a condition to deal with the potential for contaminated land, no objection is raised on environmental health grounds.

### **Public Right of Way**

8.38 Public Right of Way ZR607 passes close to, and partly within the application site close to the eastern boundary. The footpath provides access into The Charltons and beyond to a number of the services and facilities in Boughton. This is particularly important as there is no footpath along Bull Lane adjacent to the application site. During the course of the application an amendment has been made so that the current alignment of the footpath is retained and the KCC PROW Officer raises no objection to the proposal.

8.39 KCC Highways & Transportation noted that to improve the likelihood of future occupiers, and indeed, anyone else using this footpath, gaining access to the services and facilities in Boughton, it has been requested that the footpath is surfaced. I have liaised with the agent regarding this and I have received confirmation that the applicant is willing to carry this out. As such, I have recommended a related condition and am of the view that this will improve the pedestrian connectivity of the site.

### **Ecology**

8.40 The site is predominately comprised of unmanaged grassland, however, there are also a number of trees present both within and close to the margins of the site. As a result there is the potential for protected species to be present and I therefore consulted with KCC Ecology. As set out above in the consultation section, during the course of the application, a request was made for additional information in the form of survey work to be undertaken. These have been carried out and KCC Ecology have been re-consulted at each stage of the process.

8.41 KCC Ecology agree with the survey that there are no reptiles present on the site and clarification has been provided that the trees with the potential to be used by roosting bats are being retained. As a result, KCC Ecology raise no objection to the application subject to a number of conditions being imposed such as the requirement for bird and bat boxes and for a native planting scheme. I have recommended these and am of the view that this will achieve the aim of providing net gains for biodiversity.

### **The Conservation of Habitats and Species Regulations 2017**

8.42 The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) and the Swale SPA which are 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.

8.43 Residential development within 6km of any access point to the SPAs 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 Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£239.61 per dwelling, as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are considered to be ecologically sound.

8.45 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 a 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.

- 8.46 In this regard, whilst there are likely to be impacts upon the SPAs arising from this development, the scale of development (16 new dwellings on an allocated site within the built up area, with access to other recreation areas, including open space immediately adjacent to the site) and the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff will ensure that these impacts will not be significant or long-term. The allocation of the site in the Local Plan means that it would have been considered during the adoption process of the Local Plan. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPAs.
- 8.47 It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. (<https://birdwise.org.uk/>).

### **Other Matters**

- 8.48 Although I am of the view that the vast majority of the points raised by neighbours have been considered by virtue of the consultation and appraisal section above, of those that remain I respond as follows. Firstly, as Members will be aware, loss of a view or impact upon property prices are not material planning considerations and as such I make no further comment in respect of this.
- 8.49 I do note the comment that has been provided which states that overhead power lines, which provide electricity to the oast houses, cross the application site. Having assessed where these power lines are located I believe it to be very likely that they would need to be diverted / placed underground in order to allow the development to proceed. UK Power Networks have been consulted as part of this application, however they have confirmed that they do not make specific comments on planning applications where power lines would be required to be diverted. Instead, contact would need to be made with UK Power Networks by the developer post any planning permission being issued.
- 8.50 Having considered this I am of the view that a condition, requiring either the power lines to be diverted, including potentially placing these underground, should be imposed. This will allow for the Council to be able to consult with UK Power Networks on the details that are provided and will enable the power lines to be dealt with in an appropriate manner.

## **9.0 CONCLUSION**

- 9.1 In overall terms, I give significant weight to the allocation of the site in the Local Plan for a minimum of 16 dwellings and that the Council can no longer demonstrate a five year supply of housing land. As such I take the view that the proposal would contribute towards the Council's housing supply in a location which is accepted in principle. I also give weight to the provision of affordable housing upon the site which will help to meet an identified need. I am of the view that the proposal, subject to the relevant recommended conditions, satisfies the requirement to mitigate against impacts upon the designated landscape.
- 9.2 The objections that have been received have been considered in detail. However, based upon the views of consultees and the appraisal of the application as set out above I believe that subject to the imposition of the listed conditions the proposal would not give rise to unacceptable harm in regards to residential or visual amenity, the landscape designation or highway safety and amenity. Additionally, I believe that

matters in relation to ecology, drainage and contamination can be adequately dealt with by virtue of the conditions recommended. The applicant has committed to the payment of the developer contributions to mitigate against increased demand on local infrastructure.

- 9.3 On the basis of the above, I consider that planning permission should be granted for the development subject to the conditions listed below, an appropriately worded Section 106 Agreement to include the contributions as set out in this report and to secure the 7 affordable units.

## 10.0 RECOMMENDATION

GRANT Subject to the following conditions and suitably worded Section 106 Agreement (including authority to make such minor amendments to the wording of the legal agreement and the conditions as may reasonably be required):

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

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

- 2) The development hereby approved shall be carried out in accordance with the following drawings: 17-44-11 (received 15<sup>th</sup> March 2018); 17-44-12 (received 15<sup>th</sup> March 2018); 17-44-13 (received 15<sup>th</sup> March 2018); 17-44-14 (received 15<sup>th</sup> March 2018); 17-44-16 (received 15<sup>th</sup> March 2018); 17-44-18 (received 15<sup>th</sup> March 2018); 17-44-19 (received 15<sup>th</sup> March 2018); 17-44-20 (received 15<sup>th</sup> March 2018); 17-44-17 A (received 28<sup>th</sup> March 2018); 17.44.30B (received 29<sup>th</sup> May 2018); 17.44.10A (received 28<sup>th</sup> January 2019); and 17.44.15A (received 28<sup>th</sup> January 2019).

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

- 3) 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.

- 4) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, hard surfacing materials, and an implementation programme.

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

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

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

- 6) 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.

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

Reason: To ensure that foul water is adequately dealt with.

- 8) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the Local Planning Authority:

1) A preliminary risk assessment which has identified:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

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

- 9) Development shall not commence 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 be based upon the Flood Risk Assessment and Drainage Strategy Report (November 2018, Revision 2) and 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 (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

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.

- 10) No dwelling of the development hereby permitted shall be occupied (unless as agreed within an implementation schedule) until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of ‘as constructed’ features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

- 11) Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to demonstrate to the Local Planning Authority’s satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the approved details.

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

- 12) No development shall take place until a “lighting design strategy for biodiversity” for the site boundaries has been submitted to and approved in writing by the Local Planning Authority. The lighting strategy shall:

a) Identify those areas/features on site that are particularly sensitive for badgers and bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;

b) Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy.

Reason: In the interests of biodiversity and to ensure the protection of protected species.

- 13) Prior to the completion of the development hereby approved, details of how the development will enhance biodiversity will be submitted to and approved in writing by the Local Planning Authority. These details shall include the installation of bat and bird nesting boxes. The approved details will be implemented and thereafter retained.

Reason: In order to achieve a net gain in biodiversity.

- 14) No development beyond the construction of foundations shall take place until a detailed site layout drawing at a scale of 1:200 showing the boundary treatments to be used across the site, including details of the bricks, have been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved details before the 1<sup>st</sup> dwelling is occupied or in accordance with a programme that shall have been agreed in writing by the Local Planning Authority.

Reason: In the interests of visual and highway amenity.

- 15) No retained tree shall be damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the amended arboricultural tree survey & Impact assessment report (ref: 1607 version 3) dated 03/12/2018, 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. The installation of tree protection barriers, the methods of working shall be undertaken in accordance with the amended arboricultural tree survey & Impact assessment report (ref: 1607 version 3) dated 03/12/2018.

Reason: To protect and enhance the appearance and character of the site and locality

- 16) If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted in the same location 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 protect and enhance the appearance and character of the site and locality,

- 17) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 08:00 – 18:00 hours, Saturdays 08:00 – 13:00 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

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

Reason: In the interests of residential amenity.

- 19) 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.

- 20) The development hereby approved shall not commence until details have been submitted to and approved in writing by the Local Planning Authority demonstrating how the development will meet the principles of 'Secure by Design'. The development shall then be completed strictly in accordance with the approved details.

Reason: In order to secure a satisfactory form of development having regard to the nature of the site.

- 21) The dwellings hereby approved shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

- 22) The development hereby approved shall not commence until a Construction Management Plan to include the following has been submitted to and approved in writing by the Local Planning Authority:

- (a) Routing of construction and delivery vehicles to / from site;
- (b) Parking and turning areas for construction and delivery vehicles and site personnel;
- (c) Timing of site servicing to be limited to outside of school drop-off/pick-up hours of 8-9am and 2.30-4pm;
- (d) Provision of wheel washing facilities;
- (e) Temporary traffic management / signage.

Reason: In the interests of highway safety and amenity.

- 23) Prior to the occupation of the units hereby approved, works to the existing pedestrian link to The Charltons shall be completed, prior to which the details of the works shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: To promote sustainable modes of transport.

- 24) Prior to the occupation of the units hereby approved, the access as detailed on drawing H-03 P1 (received 7<sup>th</sup> December 2018), including its width of 4.8m shall be completed and thereafter maintained.

Reason: In the interests of highway safety and amenity.

- 25) The area shown on the submitted layout as vehicle parking space, car ports, car barns or garages shall be provided before any of the dwellings are 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 2015 (as amended) (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.

- 26) Prior to the occupation of the units hereby approved, details of secure, covered cycle parking facilities shall be submitted to and agreed in writing by the Local Planning Authority. The details as agreed shall be installed and thereafter maintained.

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.

- 27) Prior to the occupation of the units hereby approved, details of electric vehicle charging facilities shall be provided to and agreed in writing by the Local Planning Authority. The facilities shall thereafter be installed and retained in accordance with the agreed details.

Reason: To promote sustainable modes of transport.

- 28) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended), no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway without the consent in writing of the Local Planning Authority.

Reason: In the interests of visual amenity.

- 29) No development shall take place until details have been submitted to the Local Planning Authority and approved in writing showing how the distribution poles and

overhead lines present on the site are to be diverted and / or services placed underground.

Reason: In the interests of residential and visual amenity.

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

Reason: In the interests of residential amenity.

## **INFORMATIVES**

- 1) A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development, please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).
- 2) A separate application will need to be made to UK Power Networks to divert the existing power supply which crosses the site. To make this application UK Power Networks can be contacted at [www.ukpowernetworks.co.uk](http://www.ukpowernetworks.co.uk)

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

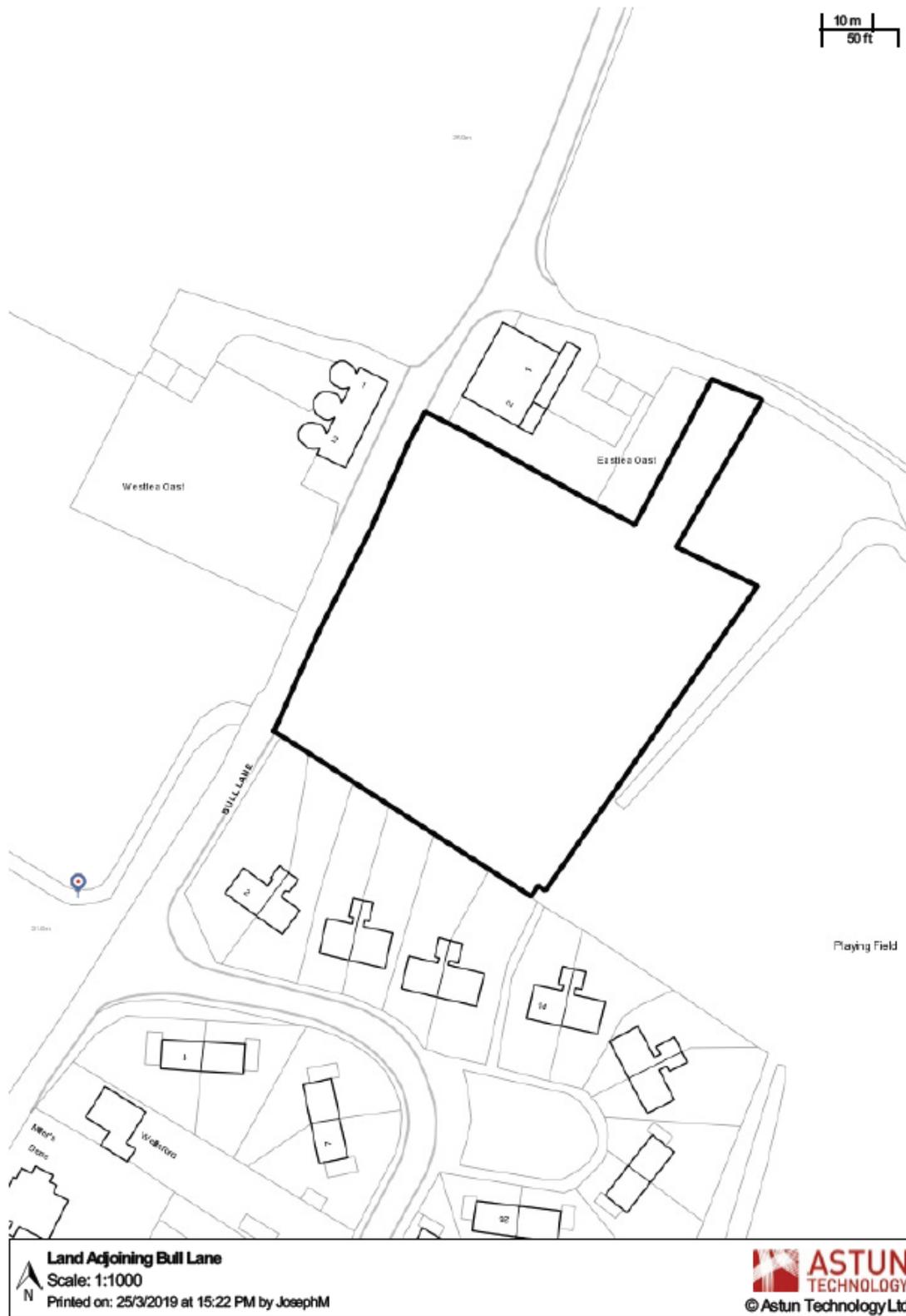
In this instance:

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.





**Swale Borough Council Building for Life Checklist**

**Using this checklist**

Please refer to the full Building for Life document (<http://www.udg.org.uk/sites/default/files/publications/BFL12COMPLETED.pdf>) when assessing development proposals.

For each of the criteria and questions listed below you should provide a brief comment as to whether or not the matter has been addressed / considered fully within the submissions.

Not all developments will be able to meet all criteria. This may be due to site-specific circumstances, or matters outside of the applicant's control. In such instances applicants should explain why criteria can't be met, and officers can weight their assessment / comment accordingly.

APPENDIX 1

SITE ADDRESS:  
APPLICATION NO.:

1. CONNECTIONS

ITEM	COMMENT	(SBC use) ✓/✗
1a Where should vehicles come in and out of the development?	The main access for the site utilises an existing access from Bull Lane and as such I consider this appropriate.	✓
1b Should there be pedestrian and cycle only routes into and through the development?	The Public Right of Way provides a pedestrian only route.	✓
1c Where should new streets be placed, could they be used to cross the development site and help create linkages across the scheme and into the existing neighbourhood and surrounding places?	The site is located upon the edge of an existing settlement between residential units and the open countryside. I consider the linkages (PROW) into the existing neighbourhood to be well considered.	✓
1d How should the new development relate to existing development?	The site is adjacent to existing development.	✓

2. Facilities and services

ITEM	COMMENT	(SBC use) ✓/✗
2a Are there enough facilities and services in the local area to support the development? If not, what is needed?	The site has been allocated in the Local Plan and Boughton under Bleas has been assessed as being capable of supporting this scale of development.	✓
Where new facilities are proposed: 2b Are these facilities what the area needs?	The proposal is modest and in my view would not be required to propose new facilities.	✓
2c Are these new facilities located in the right place? If not, where should they go?	N/A – See above	N/A
2d Does the layout encourage walking, cycling or using public transport to reach them?	N/A – See above	N/A

3. Public transport

ITEM	COMMENT	(SBC use) ✓/✗
3a What can the development do to encourage more people (both existing and new residents) to use public transport more often?	The improvement to the PROW will allow for easier accessibility to public transport routes.	✓
3b Where should new public transport stops be located?	N/A	N/A

4. Meeting local housing requirements

ITEM	COMMENT	(SBC use) ✓/✗
4a What types of homes, tenure and price range are needed in the area (for example, starter homes, family homes or homes for those downsizing)?	The application provides a range of dwelling types tilted towards smaller units. Due to the potential landscape impacts I consider this to be appropriate.	✓
4b Is there a need for different types of home ownership (such as part buy and part rent) or rented properties to help people on lower incomes?	The site includes provision for 40% of the units to be affordable.	✓
4c Are the different types and tenures spatially integrated to create a cohesive community?	The different tenure types are quite closely grouped, however, this is a relatively small development so this is expected.	✓

APPENDIX 1

5. Character

ITEM	COMMENT	(SBC use) ✓/✗
5a How can the development be designed to have a local or distinctive identity?	The design picks up on Kent vernacular with a contemporary twist.	✓
5b Are there any distinctive characteristics within the area, such as building shapes, styles, colours and materials or the character of streets and spaces that the development should draw inspiration from?	There is a mixture of building styles and designs in the local area and not one specific characteristic which I believe could be said to be distinctive.	N/A

6. Working with the site and its context

ITEM	COMMENT	(SBC use) ✓/✗
6a Are there any views into or from the site that need to be carefully considered?	The site will form a new edge to the built up area boundary and as such is relatively sensitive in terms of available viewpoints. I believe that the design and layout has been well considered in this respect.	✓
6b Are there any existing trees, hedgerows or other features, such as streams that need to be carefully designed into the development?	There is some existing planting which will be required to be removed and some which is being retained. There is sufficient room for replacement planting.	✓
6c Should the development keep any existing building(s) on the site? If so, how could they be used?	N/A	N/A

7. Creating well defined streets and spaces

ITEM	COMMENT	(SBC use) ✓/✗
7a Are buildings and landscaping schemes used to create enclosed streets and spaces?	Although the development site is relatively small I consider that this aspect has been acceptably dealt with.	✓
7b Do buildings turn corners well?	Yes, buildings upon corner plots all have dual aspects.	✓
7c Do all fronts of buildings, including front doors and habitable rooms, face the street?	Where possible.	✓

8. Easy to find your way around

ITEM	COMMENT	(SBC use) ✓/✗
8a Will the development be easy to find your way around? If not, what could be done to make it easier to find your way around?	Yes, it is of a limited size.	✓
8b Are there any obvious landmarks?	Not within the site.	N/A
8c Are the routes between places clear and direct?	Yes, due to the response to 8a as above.	✓

9. Streets for all

ITEM	COMMENT	(SBC use) ✓/✗
9a Are streets pedestrian friendly and are they designed to encourage cars to drive slower and more carefully?	Due to the limited size of the site I would expect cars to naturally travel at slow speeds.	✓
9b Are streets designed in a way that they can be used as social spaces, such as places for children to play safely or for neighbours to converse?	I believe that the layout will encourage the roads to be used as social spaces.	✓

APPENDIX 1

**10. Car parking**

ITEM	COMMENT	(SBC use) ✓/✗
10a Is there enough parking for residents and visitors?	Yes.	✓
10b Is parking positioned close to people's homes?	Yes.	✓
10c Are any parking courtyards small in size (generally no more than five properties should use a parking courtyard) and are they well overlooked by neighbouring properties?	No more than 5 properties use the two larger areas of parking. They are well located in the site for surveillance.	✓
10d Are garages well positioned so that they do not dominate the street scene?	No garages on the site. There are car ports but I consider these to be appropriately located / well designed.	✓

**11. Private and public spaces**

ITEM	COMMENT	(SBC use) ✓/✗
11a What types of open space should be provided within this development?	The site is not big enough to accommodate this, however, there is public open space immediately adjacent to the site.	✓
11b Is there a need for play facilities for children and teenagers? If so, is this the right place or should the developer contribute towards an existing facility in the area that could be made better?	As above, however, a contribution is also requested.	✓
11c How will they be looked after?	N/A	N/A

**12. External storage and amenity areas**

ITEM	COMMENT	(SBC use) ✓/✗
12a Is storage for bins and recycling items fully integrated, so that these items are less likely to be left on the street?	Yes.	✓
12b Is access to cycle and other vehicle storage convenient and secure?	Yes.	✓

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**PLANNING COMMITTEE – 4 APRIL 2019****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 18/506627/FULL</b>		
<b>APPLICATION PROPOSAL</b> Proposed front porch and single storey rear extension, as amended by drawings JO/18/142.01rev A. 02A, 03A and 04A.		
<b>ADDRESS</b> 5 Parsonage Cottages Bexon Lane Bredgar Sittingbourne Kent ME9 8HD		
<b>RECOMMENDATION</b> - Refuse		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Bredgar Parish Council Support		
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b> Bredgar	<b>APPLICANT</b> Mr & Mrs Jordan <b>AGENT</b> Woodstock Associates
<b>DECISION DUE DATE</b> 11/04/2019		<b>PUBLICITY EXPIRY DATE</b> 30/01/19

**Planning History**

None for this property.

**Planning History for 3 Parsonage Cottages, Bexon Lane**

SW/11/0169

1) Proposed first floor pitched roof rear extension. 2) Proposed ground floor pitched roof rear extension. 3) Proposed ground floor front extension.

Approved 19/04/2011

**Planning History for 6 Parsonage Cottages, Bexon Lane**

SW/97/627

Ground floor extension and front porch.

Approved 12/09/1997

**1.0 DESCRIPTION OF SITE**

- 1.1 5 Parsonage Cottages is a simply designed semi-detached property situated in an isolated rural location outside of any Local Plan built up area boundary and within the Kent Downs Area of Outstanding Natural Beauty. There is a grassed area and a paved area for parking a vehicle to the front of the property, and a long-enclosed garden to the rear.
- 1.2 The cottage is one of two pairs of semi-detached properties of similar appearance and size. They are grouped as numbers 3 and 4 as one pair, and numbers 5 and 6 as another pair. To the rear of the property there is open countryside and across the lane are a number of detached properties of differing styles and sizes. There is no recorded planning history for the property but it has existing minor extensions in the form of a

small 1.0m deep porch and, at the rear, a brick built single storey rear extension (3.3m deep) and a small 3.1m deep uPVC conservatory which sits on the common boundary with number 6.

- 1.3 The immediately adjoining attached cottage (number 6) has a 3.5m deep single storey rear extension set away from the common boundary with number 5 by 2.0m, and a small 1.25m deep porch to the front; both as approved in 1997.
- 1.4 Nearby, at number 3, there is a combined single and two storey rear extension reaching a maximum of 3.8m beyond the rear of the attached neighbour at number 4, and this is set 1m off the common boundary. Number 3 also has a combined porch and front extension spanning the entire front elevation and projecting 1.1m forwards.
- 1.5 All of these neighbouring extensions comply with the Council's current published design guidelines apart from the porch at number 6 which, at 1.25m deep, is just larger than the 1.2m design standard for porches.

## **2.0 PROPOSAL**

- 2.1 The current application seeks planning permission for a new front porch and a single storey brick and tiled pitched roof rear extension with 2no. rooflights and bi-fold doors facing the rear garden. The existing porch, single storey rear extension and rear conservatory would all be removed as part of the proposal.
- 2.2 The proposed front porch sees an enlargement and minor repositioning of the existing porch, which would now project from the front of the property by 1.5m, with a width of 2.5m. It would have a height to the eaves of approximately 2.7m and an overall height measurement of approximately 3.6m.
- 2.3 The proposed single storey rear extension was originally shown as a 6.0m long rear extension but it has since been reduced in length to show a proposed rear projection of 5m. This extension would have a width measurement of approximately 6.65m and it would sit directly on the common boundary with number 6. It would have a gable ended pitched roof where the height to the eaves would be 2.47m with an overall maximum height of 3.65m.

## **3.0 PLANNING CONSTRAINTS**

- 3.1 The site lies within the Kent Downs Area of Outstanding Natural Beauty which enjoys statutory protection in order to conserve and enhance the natural beauty of the landscape under the National Parks and Access to the Countryside Act of 1949 & Countryside and Rights of Way Act, 2000.

## **4.0 POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).
- 4.2 The Swale Borough Local Plan "Bearing Fruits 2031" (adopted 2017). Policies CP4 (good design), DM14 (general development criteria), DM11 (extensions to, and replacement of, dwellings in the rural area) and DM16 (alterations and extensions) are relevant.

Policy CP4 states that all development proposals should be "appropriate to the context in respect of materials, scale, height and massing" and "Adhere to relevant supporting design guidance".

DM14 requires (amongst others) that developments “cause no significant harm to amenity and other sensitive uses or areas”.

DM16 requires developments are “appropriately scaled in relation to the building and its surroundings” and “protect residential amenity”.

4.3 The Council’s own Supplementary Planning Guidance (SPG) entitled “Designing an Extension A Guide for Householders” has been in use since 1992 and establishes consistency in decision making and a balance between the rights of neighbours where extensions are concerned.. Of particular relevance here is the guidance in relation to porches at paragraph 5.2/5.3 and on rear extensions at paragraph 5.7.

4.4 In relation to front porches paragraph 5.3 of the SPG states that;

*“To make sure the extension to the front of your dwelling is of a good design, the Borough Council normally requires that it should have a pitched roof and that its projection should be kept to an absolute minimum. The Borough Council normally requires that front additions are kept to a maximum of 1.2m.”*

4.5 To avoid situations where a rear extension may adversely affect the outlook and amenity at the rear of attached or closely spaced houses, the guidance is that a single storey rear extension on the boundary should not extend along the common boundary further than 3m from the original rear wall. The SPG states;

*“For single storey rear extensions close to your neighbour’s common boundary, the Borough Council considers that a maximum projection of 3.0m will be allowed.”*

...and...

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

## **5.0 LOCAL REPRESENTATIONS**

5.1 None received.

## **6.0 CONSULTATIONS**

6.1 Bredgar Parish Council supports the application. No reasons for this support were initially given, but I contacted the Parish Council to establish their specific planning material comments, in accordance with the Council’s Constitution and they responded stating the following specific comments:

*1 The current neighbours do no object to the proposal, and any future purchaser of number 6 would be buying with the extension to number 5 in place, and so in buying the property, would be happily accepting the position and size of that extension.*

*2 From a planning perspective there is a precedent for a similar extension in the same group of houses, as number 3, Parsonage Cottages appear to have such an extension, approved in 2011 (SW/11/0169).*

*3 Turning to the adopted Local Plan: CP4 – ‘Requiring Good Design’ – I don’t believe that the proposed structure would be contrary to anything in this policy. I assume you are referring to s 8 – “scale height and massing”, and as above these factors do not seem to have*

*caused an issue in relation to the structure at no 3, nor with the current neighbours.*

*DM14 – General Development Criteria – the only potential issue here is with s3 – which refers to the ‘Supplementary Planning Guidance’ Having reviewed the Swale Planning and Development Guidelines (no 5) on Designing an Extension, I don’t see anything which the proposed application falls foul of.*

*DM16 – Alterations and Extensions – I believe that the proposal fulfils the criteria (insofar as they can be applied to a small rear extension).*

- 4 *The conclusion that the structure would be “oppressive and overbearing” seems somewhat extreme, especially in the light of the Guidance and Local Plan.*

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.1 Application papers and drawings referring to application reference 18/506627/FULL.

## **8.0 APPRAISAL**

### Principle of Development

- 8.1 The main considerations in the determination of this planning application are the design of the extensions and their impact on the character of the existing dwelling including any impact of the proposal upon the residential and visual amenities of the area, on the designated countryside location and on the natural beauty of the Kent Downs Area of Outstanding Natural Beauty.

### Visual Amenity

- 8.2 The proposed single storey rear extension would be situated to the rear of the property and as such would not be visible from public viewpoints so there would not be any adverse impact on the existing streetscene from this element of the proposal.
- 8.3 The Council’s Supplementary Planning Guidance entitled “Designing an Extension” under paragraph 5.3, advises that front additions are kept to a maximum of 1.2m deep. I note that both number 6 which adjoins the host property, and number 3, have both had previous approvals for front additions. At number 6 this has a forward projection of 1.25m, but this is only marginally excess of the SPG guidance, whereas at number 3 the front extension which extends across the whole width of the property has a depth of just 1.1m which is in accordance with the SPG. These do not set any kind of precedent or reason to approve the porch now proposed. In this instance the proposed porch would project to the front of the property by 1.5m which is considerably deeper than that advised by the Council’s adopted SPG, resulting in a porch which will appear bulky, overlarge, dominant and out of scale with the existing cottage, with a resultant adverse impact on visual amenity. The applicants have been given the opportunity to amend the depth of the proposed porch but have declined to do so.

### Residential Amenity

- 8.4 The Council’s Supplementary Planning Guidance entitled “Designing an extension” advises that single storey rear extensions sited along the common boundary should not exceed a depth of 3m. This standard has been set and applied across Swale for many years with a very high degree of consistency, resulting in fair treatment to all parties. Initially the proposed single storey rear extension would have projected a distance of 6m from the original rear of the property along the common boundary with no.6 Parsonage Cottages which would have doubled the usually approved distance. The

applicants were given the opportunity to amend the proposal. Various options were discussed, including one which I would have been recommended for approval where the extension would have been set in from the common boundary by 1.2m at a depth 3m, but the applicants have not been prepared to accept that compromise and the proposal has only been slightly amended and still suggests a rear projection of 5m with the extension only being set away from the common boundary with number 6 by approximately 10cm. A projection of 5m towards the rear so close to the common boundary would significantly exceed the 3m limit for rear extensions along a common boundary and I believe that the excessive depth would amount to an overbearing structure that would have an unacceptably adverse impact on the neighbouring property at number 6 which has a rear kitchen window close to this boundary.

- 8.5 At number 6 Parsonage Cottages which adjoins the current application property and shares the common boundary, the single storey rear extension approved under SW/97/627 is 3.5m deep but is set away from the common boundary by 2.0m. This respects the advice of the SPG, but I believe the extension now proposed at number 5 with the depth of 5m would significantly overshadow and limit the outlook from the neighbours' rear kitchen window.
- 8.6 At number 4 Parsonage Cottages which is situated on the north west of the property the extension would be situated 1.8m away from their side wall which would offset some of the impact of the proposed rear extension and as such allow for a rear extension which projects further than the required 3m. I consider the proposed extension would not cause such significant harm to this neighbouring amenity.
- 8.7 The Parish Council has supported the proposal for a number of reasons. With regards to their first point I do not share this view as the Borough Council acts in the public interests and seeks to strike a balance between the rights of neighbours, which often means safeguarding future amenity even if the current neighbour does not necessarily mind.
- 8.8 Reference has also been made to the extensions approved at number 3 Parsonage Cottages under SW/11/0169, but there are some fundamental differences between the two extensions. The proposal at number 3 was for a rear projection of 3.8m which is just 0.8m over the SPG guidance and the approved single storey rear extension is set away from the common boundary which offsets the additional rear projection. The case officer comments on this proposal at the time were as follows:

*“The SPG states that rear extensions on the boundary should have a depth of no more than 3 metres. However, as there is a gap of 0.8 metres between the western elevation of the proposed extension and the common boundary, which will allow space for light and remove any overbearing aspect that may have occurred towards no.4, I deem the extension to be acceptable”.*

For this reason I therefore believe there is no comparison between the approved single storey rear extension at number 3 Parsonage Cottages and this proposed single storey extension at number 5 Parsonage Cottages.

## 9.0 CONCLUSION

- 9.1 I consider the proposed porch is unacceptable due to its depth which would give rise to significant harm to the character and appearance of the streetscene, contrary to paragraph 5.3 of the Council's adopted Supplementary Planning Guidance, entitled “Designing an Extension – A Guide for Householders”.
- 9.2 I consider the proposed rear extension, by virtue of its excessive depth and positioning would amount to an overbearing and overshadowing structure that would have an

adverse impact to the residential amenity of the occupiers of no.6 and no.4 Parsonage Cottages. This would also be contrary to the Council's own published guidance.

9.3 I therefore recommend that planning permission be refused.

**10.0 RECOMMENDATION** – Refuse for the following reasons:

#### **REASONS**

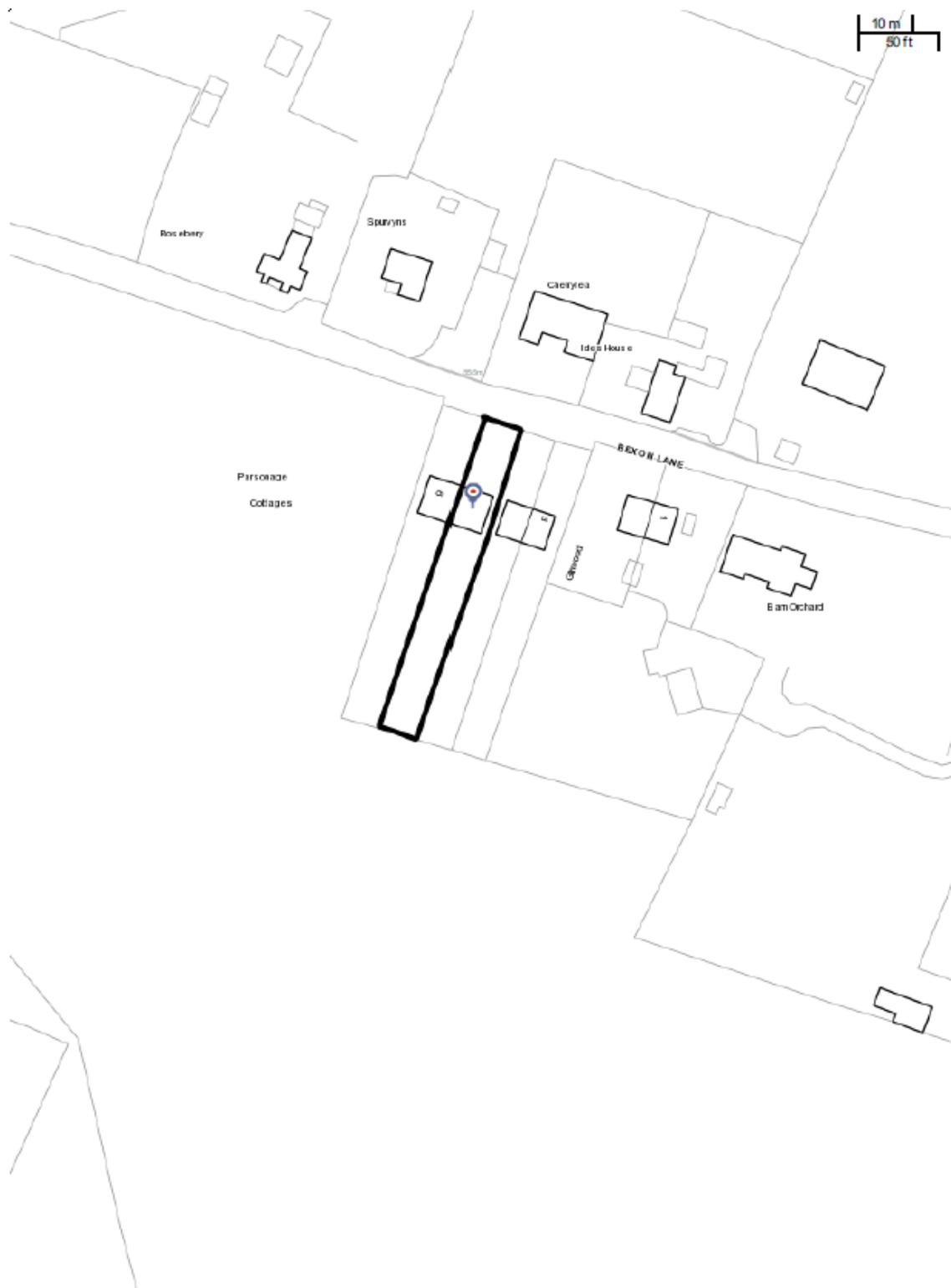
- (1) The proposed porch, by virtue of its depth would appear large and obtrusive on this modest cottage and give rise to significant harm to the character and appearance of the property, contrary to Policies CP4, DM14 and DM16 of the adopted Swale Borough Local Plan – Bearing Fruits 2031 and to paragraph 5.3 of the Council's adopted Supplementary Planning Guidance, entitled "Designing an Extension – A Guide for Householders"
- (2) The proposed single storey rear extension, by virtue of its excessive depth and positioning on the common boundary would amount to an overbearing and overshadowing structure that would have a significantly adverse impact on the outlook and residential amenity of occupiers of number 6 Parsonage Cottages. The proposal would therefore be contrary to policy DM14 of the adopted Swale Borough Local Plan – Bearing Fruits 2031 and the Council's adopted Supplementary Planning Guidance, entitled "Designing an Extension – A Guide for Householders".

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

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.



3.1 5 Parsonage Chase Bexon Lane Bredgar  
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**PLANNING COMMITTEE – 4 APRIL 2019**

**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 – Former Doubleday Lodge, Glebe Lane, Sittingbourne**

**APPEALS ALLOWED / AWARD OF COSTS REFUSED**

**COMMITTEE REFUSAL**

**Observations**

The Inspector recognised that this was a finely balanced case. It was considered that due to unanticipated costs since starting the development and in light of the viability evidence to support this, the development is unviable. Therefore, when this was taken into account along with the likely delivery of affordable housing, the Inspector concluded that this outweighed the harm that would be caused by not providing contributions towards health services, education and open space which had been previously agreed under the original proposal.

In refusing the application for an award of costs against the Council, it was considered that the Council had not behaved unreasonably on the grounds that substantive evidence had been provided in refusing the application, albeit, that a different conclusion had been reached to the Inspector.

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## Appeal Decision

Site visit made on 15 January 2019

by **Jonathan Price BA(Hons) DMS DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 March 2019

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**Appeal Ref: APP/V2255/W/18/3207752**

**Former Doubleday Lodge, Glebe Lane, Sittingbourne, Kent ME10 4LZ**

- 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 Stonechart Property Limited against the decision of Swale Borough Council.
  - The application Ref 18/500973/FULL, dated 15 February 2018, was refused by notice dated 25 July 2018.
  - The development proposed is demolition of former residential care home building and erection of 21 new dwellings, associated new access road, car parking and amenity areas.
- 

### Decision

1. The appeal is allowed and planning permission is granted for demolition of former residential care home building and erection of 21 new dwellings, associated new access road, car parking and amenity areas on land at former Doubleday Lodge, Glebe Lane, Sittingbourne, Kent ME10 4LZ in accordance with the terms of the application Ref 18/500973/FULL, dated 15 February 2018, subject to the conditions set out in the attached Schedule.

### Application for costs

2. An application for costs was made by Stonechart Property Limited against Swale Borough Council. That application is the subject of a separate Decision.

### Background and Main Issue

3. The demolition of a former residential care home and the erection of 21 new dwellings proposed is identical to a scheme already approved on 30 June 2017 under Council reference 16/507706/FULL. The proposal is therefore for a development already benefitting from planning permission, which at the time of my visit appeared to be nearing completion.
4. The approved scheme had been subject to a financial viability report, agreed by the Council's assessor, showing it to be only marginally viable with a policy-compliant level of affordable housing and the financial contributions sought. The developer had nonetheless entered into a Section 106 planning obligation with the Council, to secure both the affordable housing and the financial contributions, on the basis that carrying out the development would still yield a modest profit.
5. However, unanticipated costs were subsequently incurred when starting development and undertaking the demolition, groundworks and necessary

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

Appeal Decision APP/V2255/W/18/3207752

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foundation design and asbestos removal. These actual construction costs are addressed in a further viability report which now demonstrates a negative value for the proposal. The Council had also independently assessed this second report and found a greater negative value to the scheme and so the viability evidence is not in dispute.

6. The appeal proposal is a means to seek a reduction in the development contributions required through the first permission and the related planning obligation. By means of a Unilateral Undertaking (UU) submitted with this appeal, the proposal continues to provide two affordable rented units and financial contributions towards Habitat Regulations mitigation, libraries and wheelie bins. I am satisfied that the UU meets the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and repeated in paragraph 56 of the National Planning Policy Framework (the Framework)
7. The UU does not however include the further contributions towards health services, education and off-site open space previously agreed. Other than the two rented units secured, the remainder of dwellings will be available as affordable housing on a Shared Ownership basis as part of the arrangement provided for by Moat Housing Association. The proposal is thus entirely for affordable housing as this is defined in the Framework.
8. As a previously-approved scheme, the proposal is considered acceptable in principle and raises no material concerns in relation to the character and appearance of the area, the living conditions of current and future occupiers, highway safety, drainage or ecology. Therefore, the main issue remains as to whether or not, in the light of reduced contributions made towards supporting infrastructure, the planning balance remains in favour of the development.

#### **Reasons**

9. The development plan is the quite recently adopted Swale Borough Local Plan 2017 (LP). The supporting text in paragraph 5.5.14 onwards refers to the LP being based on a viability assessment which, until such time as a Community Infrastructure Levy is introduced, seeks contributions on developments of ten or more dwellings to help address any shortfall in the public funding of infrastructure. This viability evidence required the LP to reduce requirements in key areas such as affordable housing, where, for Sittingbourne, Policy DM8 seeks ten percent provision in schemes of eleven or more dwellings.
10. The supporting text in LP paragraph 5.5.17 indicates that the relatively low percentage requirement of affordable housing required by Policy DM8 means the expectation is that developments should normally be able to meet the remaining contributions sought by the Council. Where developer contributions may need to be reduced for viability reasons the supporting text states the Council will agree to this where the advantages of proceeding with the development would outweigh the disadvantages.
11. Although the shared-ownership units are not guaranteed through the UU, I have no reason to doubt that these will be made available on this basis and that the scheme is to be entirely for affordable housing. This would provide a substantial social benefit as, for viability reasons, a policy-compliant scheme would normally only be required to provide 10 per cent of affordable housing.

Appeal Decision REF/2220/19/20/201/24

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12. The fact the development has gone on to be nearly completed has in this case limited bearing on the viability case for a reduced level of contributions. The evidence before me is that the unanticipated construction costs, and the reduced ability to support the full level of contributions, were reported to the Council at an early stage of the scheme. Irrespective of the Council's eventual response to this, further financial risk might have been incurred if works had been brought to a halt.
13. The main parties have put forward competing arguments over the legitimacy of the health services, education and open space contributions sought and the degree of impact the proposal would have on the existing infrastructure in comparison with the previous residential care home. However, these arguments do not alter the viability position in relation to the scale of financial contributions required by the Council. The proposal has complied with LP Policy CP6 insofar as demonstrating to the Council's satisfaction a financial position, via an open book assessment, which shows the development's viability to be threatened by LP infrastructure contribution requirements.
14. I find no reason to conclude that the financial contributions sought towards health services, education and open space are not well-founded and reasonably necessary to off-set the additional pressure on services resulting from the development. There would be significant harm deriving from the failure of the development to provide for these contributions. However, the social benefits of 21 affordable dwellings would be substantial and, combined with the moderate local economic benefits derived from the construction and additional household spend and tax revenue, tip the balance in favour of a proposal with the reduced financial commitments provided by the UU.

#### **Habitat Regulations Assessment (HRA)**

15. The LP was the subject of an HRA which established the financial contributions necessary to mitigate the recreational impacts of housing developments within 6km of the Medway Estuary and Marshes and the Swale Special Protection Areas (SPAs). The SPAs are European protected sites safeguarded under EU and domestic nature conservation legislation.
16. The mitigation measures agreed do not avoid the requirement for a project level HRA. However, the tariff secured through the UU will contribute towards the works carried out by the North Kent Strategic Access Management and Monitoring Scheme and this allows me to reach the conclusion that the 21 dwellings proposed will not have an adverse effect on the integrity of the SPAs.

#### **Conditions**

17. The development is at an advanced stage and I am advised by the Council that a number of the conditions imposed upon the original planning permission have been discharged. I am applying the outstanding conditions requested by the Council and if in the interim further of these have in fact been discharged, that is a matter which can be addressed by the parties.
18. In the interests of certainty, conditions specify the plans approved and the details of those already discharged. In the interests of an acceptable living environment for residents, conditions remove permitted development rights for means of enclosure fronting a highway, restrict the times of demolition and

Appeal Decision REF/16/507706/FULL

construction and secure compliance with the submitted Code of Construction Practice and Site Waste Management Plan.

19. To ensure adequate on-site car parking, a condition is necessary to secure the areas provided for this. In the interests of delivering the agreed biodiversity enhancements, a condition requires implementation of these prior to occupation. In the interests of the appearance of the development, conditions secure implementation of hard and soft landscaping, with the protection/retention of certain trees and the future replanting of failures. Conditions are needed to secure an agreed sustainable drainage system for the development.

### Conclusion

20. For the above reasons I conclude that the appeal should be allowed.

*Jonathan Price*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby approved shall be carried out in accordance with the following approved drawings: SL-001, 005 rev O; 006 rev. F; 007 rev. F; 008 rev, H; 009 rev. G; 010 rev. D (as approved under 16/507706/FULL), 7A - Visibility and Tracking (as approved under 16/507706/FULL) , U643TCP (as approved under 16/507706/FULL); U643TPP (as approved under 16/507706/FULL); 011 A.
- 2) The development shall be carried out in accordance with the details as agreed under discharge of condition application references 17/503513/SUB; 17/504681/SUB; and 17/506153/SUB.
- 3) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended), no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway without the consent in writing of the local planning authority.
- 4) 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 - 1900 hours, Saturdays 0730 - 1300 unless in association with an emergency or with the prior written approval of the local planning authority.
- 5) The development shall be carried out in accordance with the submitted Code of Construction Practice, Site Waste Management Plan and on site car parking plan (for contractor parking during construction) submitted on 7th February 2017 under planning application ref 16/507706/FULL. The construction of the development shall be carried out in accordance with BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the local planning authority.
- 6) The area shown on the submitted plan - namely Proposed Site Plan, no.005 Revision O as car parking and turning space shall be kept

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available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto. In addition, the parking to the front of Blocks A and B shall be allocated so that each dwelling within these blocks has at least one of these parking spaces. Such land and access thereto shall be provided (and allocated where necessary) prior to the occupation of the dwellings hereby permitted.

- 7) The biodiversity enhancements as set out on page 31 and 32 of the submitted Preliminary Ecological Appraisal shall be implemented on site prior to the occupation of the 1st of the dwellings hereby approved.
- 8) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority.
- 9) 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.
- 10) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme (details of which were approved under discharge of condition application ref 17/504681/SUB) have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
- 11) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority; this may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.
- 12) The trees shown on the plans hereby approved as "existing trees to be retained" shall be retained and maintained. Any trees removed, dying, being severely damaged or becoming seriously diseased within five years of the date of this permission shall be replaced with trees or shrubs of such size and species as may be agreed with the local planning authority.
- 13) All trees to be retained must be protected by barriers and ground protection at the recommended distances as specified in BS5837: 2012 'Trees in relation to design, demolition and Construction - Recommendations' before any equipment, machinery or materials are brought on to the site and shall be maintained until all equipment,

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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.

---End of Conditions---



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## Costs Decision

Site visit made on 15 January 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2019

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### Costs application in relation to Appeal Ref: APP/V2255/W/18/3207752 Former Doubleday Lodge, Glebe Lane, Sittingbourne, Kent ME10 4LZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Stonechart Property Limited for a full award of costs against Swale Borough Council.
  - The appeal was against the refusal of planning permission for demolition of former residential care home building and erection of 21 new dwellings, associated new access road, car parking and amenity areas.
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### Decision

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

### Procedural Matter

2. The costs application refers initially to a partial award of costs but in conclusion refers to seeking a full amount. Based on the content of the application, I am considering this as one made for a full award of appeal costs.

### Reasons

3. Advice over the award of planning appeal costs is set out in the Government's Planning Practice Guidance (PPG). It states the established premise that parties to an appeal normally meet their own costs. However, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal.
4. The application is based on the Council having behaved unreasonably in a substantive sense. Paragraph 49 of the PPG provides examples of the types of behaviours that may give rise to a substantive award against a local planning authority. In this case the applicant is citing a failure of the Council to produce evidence to substantiate its reason for refusal on appeal.
5. The Council had independently assessed the viability case for the proposal and accepted its findings. Paragraph 57 of the National Planning Policy Framework states that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. In this case I consider the development plan and its evidence base were up to date.

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The change in circumstances was the unanticipated construction costs for delivering the 21 dwellings, which was not in dispute.

6. It is quite apparent to me that when the planning application was determined the Council were made fully aware that a policy-compliant level of two affordable rented units could be secured through a planning obligation and that the remaining 19 units were likely to be made available on a shared ownership basis. There was nothing unreasonable in the Council then deciding the balance between the respective weights given to the advantages of a viable entirely-affordable housing scheme and the disadvantages of foregoing the contributions made towards education, health care and open space.
7. An officer-level recommendation would be a normal part of the planning decision-making process and the weight attached to the competing factors was then a matter for the Council to decide. In this respect I consider there was adequate evidence before the Council, through a quite detailed report, over both the affordable housing offer and the justification for and intended use of each of the contributions.
8. Ultimately, it was reasonable for the Council as decision-maker to decide the weight given to the various material considerations. The planning appeal provides the opportunity to contest the weight given to each of these. Although in this case the appeal was allowed, this does not necessarily lead to a conclusion that the Council behaved unreasonably. On the evidence before me, I conclude there to be no basis for a finding of unreasonable behaviour, as there had been no failure on the part of the Council to adequately substantiate the reason for refusal.

#### **Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, the application for an award of costs is refused.

*Jonathan Price*

INSPECTOR