

## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 15 August 2019

Time: 7.00pm

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

#### Membership:

Councillors Cameron Beart, Monique Bonney, Roger Clark, Simon Clark, Tim Gibson (Chairman), James Hall, Nicholas Hampshire, James Hunt, Carole Jackson, Elliott Jayes, Peter Marchington, Benjamin Martin (Vice-Chairman), David Simmons, Paul Stephen, Eddie Thomas, Tim Valentine and Tony Winckless.

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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Pages

#### 1. Emergency Evacuation Procedure

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

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

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. 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 Meeting held on 18 July 2019 (Minute Nos. 139 - 145) and the [Minutes](#) of the Extraordinary Meeting held on 23 July 2019 (Minute Nos. 146 - 150) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

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

**Advice to Members:** If any Councillor has any doubt about the

existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

## **Part B reports for the Planning Committee to decide**

### **5. Report of the Head of Planning Services**

1 - 101

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 14 August 2019.

## **Issued on Tuesday, 6 August 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

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**15 AUGUST 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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## INDEX OF ITEMS FOR PLANNING COMMITTEE – 15 AUGUST 2019

- Minutes of last Planning Committee Meeting
- Deferred Items
- Minutes of any Working Party Meetings

### PART 2

2.1 Pg 1 - 7	19/502608/FULL	MINSTER	45 Lynmouth Drive
2.2 Pg 8 - 13	19/501015/FULL	QUEENBOROUGH	Unit 5 Cullet Drive
2.3 Pg 14 - 19	19/502722/FULL	MILSTEAD	Broad oak Farm, Broad oak Road
2.4 Pg 20 - 31	16/503950/FULL	UPCHURCH	Orchard View, Otterham Quay Lane

### PART 3

3.1 Pg 32 - 50	19/500764/OUT	LOWER HALSTOW	Land Adjoining Westfield House, Breach Lane
3.2 Pg 51 - 62	19/502924/FULL	FAVERSHAM	26 Forbes Road
3.3 Pg 63 - 73	19/502540/FULL	BOUGHTON UNDER BLEAN	Bramble Hall Farm, Bushey Close

### PART 5 - INDEX

Pg 74 - 75

5.1 Pg 76 - 81		SITTINGBOURNE	Land At Crown Quay Lane
5.2 Pg 82 - 92	17/504342/FULL	NEWINGTON	Newington Working Men's Club
5.3 Pg 93 - 96	17/505803/FULL	NORTON	Greenacres Farm, Norton Road
5.4 Pg 97 - 101	18/502098/FULL	OSPRINGE	Black Cottages, Mutton Lane

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**PLANNING COMMITTEE – 15 AUGUST 2019****PART 2**

Report of the Head of Planning

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

<b>2.1 REFERENCE NO - 19/502608/FULL</b>		
<b>APPLICATION PROPOSAL</b> Proposed first floor rear terrace.		
<b>ADDRESS</b> 45 Lynmouth Drive Minster-on-sea Sheerness Kent ME12 2HT		
<b>RECOMMENDATION</b> Approve		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The development will not cause unacceptable impacts to visual or residential amenities.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection		
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN COUNCIL</b> Minster-On-Sea	<b>APPLICANT</b> Mrs C Randall <b>AGENT</b> Oakwell Design Ltd.
<b>DECISION DUE DATE</b> 19/08/19	<b>PUBLICITY EXPIRY DATE</b> 18/06/19	

**Planning History**

18/501862/FULL

Erection of a rear single storey extension and rear first floor extension. (Resubmission of 17/505728/FULL).

Approved Decision Date: 27.06.2018

17/505728/FULL

Erection of a rear single storey extension and rear first floor extension. (Resubmission of 17/503602/FULL)

Approved Decision Date: 10.01.2018

17/503602/FULL

Rear single storey extension and rear first floor extension

Withdrawn Decision Date: 12.10.2017

SW/86/1390

Proposed first floor extension

Approved Decision Date: 17.02.1987

## **1. DESCRIPTION OF SITE**

- 1.1 45 Lynmouth Drive is a two storey detached dwelling located within the built up area boundary of Minster-on-Sea.
- 1.2 The dwelling is set within quite large grounds, with hardstanding to the front of the property and private amenity space to the rear. The surrounding street scene is primarily residential in nature, although the dwellings are of varying scales and designs. The property was originally a private dwelling but has recently been converted to a House in Multiple Occupation (HMO).
- 1.3 The extensions approved at Planning Committee on 21st June 2018 under application 18/501862/FULL have been carried out at the site and are now complete.

## **2. PROPOSAL**

- 2.1 This application seeks planning permission for the use of the existing single storey flat roof at the property as a terrace. The flat roof area measures 3.8m x 1.8m and was approved under application 18/501862/FULL, along with various other extensions which have since been carried out at the property. Access to the terrace would be provided from the existing windows in the bedroom on the first floor. The only physical change to the property will be the erection of 1.1m high guarding around the perimeter of the roof terrace. A new application for planning permission is required for the terrace as the following condition was placed upon 18/501862/FULL:

*“Condition (5) The flat roof area identified on approved drawing PL 04 shall not be used at any time as a terrace or balcony.*

*Reason: To safeguard the privacy of neighbouring occupiers.”*

- 2.2 During consideration of the application, the agent was advised to include a 1.8m privacy screen on the northern side of the terrace, and subsequently amended drawings were submitted showing this screen.

## **3. PLANNING CONSTRAINTS**

- 3.0 None

## **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Policies CP4, DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017
- 4.3 The Council’s adopted Supplementary Planning Guidance (SPG) entitled ‘Designing an Extension: A Guide for Householders’

## 5. LOCAL REPRESENTATIONS

5.1 Five objections have been received from four neighbouring properties. Their contents are summarised below:

- Majority of rear garden and part of decking at No. 45a is clearly visible from the proposed terrace and affects privacy. Terrace is also visible from kitchen window at No. 45a, although it is partially obscured by foliage, in the winter the view into the kitchen will be less restricted.
- Confused about why we are being asked to comment on the same issue – condition 5 states that the flat roof area shall not be used at any time as a terrace or balcony.
- Terrace will overlook house and garden at Westcliffe – we would have no privacy.
- The doors erected at first floor level that provide access to the flat roof are illegal and were not shown on the approved plans.
- A bedroom and en-suite were approved, however an additional room has also been created at first floor level – this is at the detriment of neighbouring homes who have lost the rightful claim of privacy.
- 45 Lynmouth Drive is a HMO and is therefore a commercial business.
- The flat roof area is larger in width than the approved plans.
- The extra window under the apex should be high level glazing and non opening – 2 opening windows covered with a coloured film have been installed.
- The roof lights should be obscure glazed and non-opening unless 1.7m above floor level. The roof pitch has been increased to ensure the windows are above 1.7m and therefore are opening and clear glass. This severely compromises the privacy of 156 and 158 Scarborough Drive.

5.2 Amended drawings were submitted showing a 1.8m high privacy screen to the northern side of the terrace. No. 45a to the north of the site was reconsulted in light of this addition. Three additional neighbour comments have been received; two from objectors who have already commented on the scheme and one comment in support. Their contents are summarised below:

### Objections

- With the privacy screen proposed, it still allows for unobstructed views into my rear garden from the front of the proposed terrace/balcony.
- The amended drawings do not show what has been built on site in breach of the approved plans (as mentioned in the last five bullet points at paragraph 5.1).

### Comments in support

- The previous complaint towards the bedroom window that is screened and size compliant is being made by people opposite who have a window in the exact same position. Their window enjoys the view of their garden – it is not screened and can be opened at any time. I do not understand why there should be any issue with Mrs Randall also having a window of the same function.

- The second observation I feel relevant to be raised is regarding the dissatisfaction from 45a who feel their garden is either potentially going to be overlooked or is at risk of being fundamentally overlooked by a small balcony that is roughly 25 yards behind their garden.

## 6. CONSULTATIONS

6.1 Minster-on-Sea Parish Council objects to the application, stating the following:

*"Under the previous application for this House of Multiple Occupation [18/501862/FULL]*

*for the erection of a rear single storey extension and rear first floor extension [Resubmission of 17/505728/FULL] in granting permission for that proposal I, Condition 5 makes it abundantly clear that the flat roof area identified on approved drawing PL 04 should not be used at any time as a terrace or balcony to safeguard the privacy of neighbouring occupiers. Minster-on-Sea Parish Council would like this condition upheld for the very same reason."*

## 7. BACKGROUND PAPERS AND PLANS

7.1 All plans and documents relating to 18/501862/FULL and 19/502608/FULL.

## 8. APPRAISAL

### Principle of Development

8.1 The site is located within the built up area boundary of Minster-on-Sea where the principle of development is accepted. This application only seeks planning permission for the use of the flat roof at the rear of the property as a terrace. The main considerations in this case involve the impact of the terrace on visual and residential amenities.

### Visual Impact

8.2 The terrace would be located at the rear of the property and will not be visible in the streetscene. The addition of safety guarding and a privacy screen will be the only changes to the property, and I do not consider these screens will cause unacceptable impacts to the character and appearance of the property.

### Residential Amenity

8.3 I consider the main impact from the use of the flat roof as a terrace would be the potential for overlooking of the surrounding properties and their gardens. Firstly considering the impact to No. 45a to the north of the site, I note that this neighbouring dwelling projects approximately 6m rearwards of the flat roof. However, due to the changing land levels, (No. 45a is situated on lower ground than the host property). There is potential for the balcony to overlook the amenity space at the rear of No. 45a. As such, I recommended that the agent include a 1.8m privacy screen along the northern side of the terrace, to mitigate against any potentially harmful overlooking. Amended drawings were submitted showing this, and I now consider the application is acceptable in this respect.

- 8.4 To the rear of the site is Woodstock, Westcliff Drive. The terrace would be located roughly 33m from the rear elevation of this property. The Council expects a distance of 21m between the rear elevations of neighbouring dwellings. The distance here is comfortably in excess of this amount, and therefore I consider any impact will be acceptable.
- 8.5 To the south of the site lie Nos. 156 and 158 Scarborough Drive. The first floor extension permitted under 18/501862/FULL is situated between these neighbouring dwellings and the flat roof, and the flat roof does not project rearwards of this extension. As such, views of No. 156 and 158 from the terrace would be restricted by the extension, and therefore I consider the impact upon these properties will be acceptable.

#### Other Matters

- 8.6 I note the Parish Council's and neighbours' comments with regards to the previous condition placed upon 18/501862/FULL which restricts the use of the flat roof as a terrace or balcony. Under the previous application, the flat roof was not intended to be used as a terrace, and the condition was imposed to ensure the Council would be able to assess the impact the use of this flat roof as a terrace would have upon residential and visual amenity, should such a proposal ever come forward.
- 8.7 I can confirm for Members that the reason for imposing conditions restricting permitted development rights, uses of land or, in this case, the use of a flat roof, is not necessarily to prevent them ever being used for such a purpose. It is to give the Council control over what could be potentially harmful development that might not otherwise require planning permission. The fact that it was felt necessary to impose the condition in the first instance will never amount to a reason for refusing permission for the development it controls. Members must assess the development on its own merits, and reach a decision accordingly. The fact that it is restricted by condition should play no part in the deliberations of this Planning Committee.
- 8.8 A neighbour has raised several other issues with regards to other aspects of the completed extension. There have been several enforcement complaints made in relation to this property. My enforcement team have visited the site on numerous occasions and are satisfied that the build has been carried out in accordance with the approved drawings and the conditions imposed on that permission. The only matter this application seeks permission for is the use of the flat roof as a terrace, and therefore no other element of the extensions built at the property is relevant to this application.

## 9. CONCLUSION

- 9.1 To conclude, I do not consider that the use of the flat roof as a terrace with the erection of a privacy screen will not cause adverse harm to either visual or residential amenities. Therefore I recommend planning permission be granted.

## 10. RECOMMENDATION - GRANT subject to the following conditions:

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

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

- (2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved drawings no: PL01, PL04 A and PL05 A.

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

- (3) The privacy screen shown on approved drawings PL04 A and PL05 A shall be fabricated in obscured glazing. The screen shall be installed prior to first use of the terrace and shall be maintained at all times that the terrace remains in place.

Reason: In the interests of residential amenity and privacy of the adjacent dwelling.

### **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.



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<b>2.2 REFERENCE NO - 19/501015/FULL</b>		
<b>APPLICATION PROPOSAL</b> Change of use from vehicle repair workshop to a soft play centre for children aged up to 12 years (Class D2), including the erection of a car park boundary fence.		
<b>ADDRESS</b> Unit 5 Cullet Drive Queenborough Kent ME11 5JS		
<b>RECOMMENDATION</b> Grant subject to conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal would be acceptable in principle for a temporary period of time. It would not cause harm to visual or residential amenity, and provides an acceptable parking provision.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Town Council objection		
<b>WARD</b> Queenborough And Halfway	<b>PARISH/TOWN COUNCIL</b> Queenborough	<b>APPLICANT</b> Mr Andrew Hayward <b>AGENT</b>
<b>DECISION DUE DATE</b> 06/05/19	<b>PUBLICITY EXPIRY DATE</b> 08/04/19	

**Planning History**

SW/79/0652

Change of use to rectification of marine damage on imported new vehicles

Approved Decision Date: 10.08.1979

**1. DESCRIPTION OF SITE**

1.1 Unit 5 Cullet Drive is an industrial unit which forms part of a block of five industrial units on the eastern side of Cullet Drive in Queenborough, which is a solely industrial area. The block of industrial units is set roughly 28m from Cullet Drive, and all have hardstanding to the front of the units. Unit 5 is located at the southern end of the block, and has a footprint of 35m x 15m. Internally, the unit is mainly undivided, with only a vehicle repair bay, washroom, and expansive central area. The unit has a standard industrial appearance, being clad with grey metal sheeting and has two roller shutter doors in the front elevation, whilst one shutter is located in the rear elevation.

1.2 The unit is currently vacant, but was most recently used for vehicle repairs.

**2. PROPOSAL**

2.1 This application seeks planning permission for the change of use of a vacant industrial unit to a play centre for children (Use Class D2).

2.2 No external alterations to the unit are proposed. Internally, the unit would comprise of a reception desk, office, kitchen/café, main soft play area, toddler soft play area, two party rooms and central seating area. The centre would be for children between 6 months and 12 years of age, and can also be used for children's parties. It is proposed

to be open from 9.30am to 6.30 pm Monday to Saturday and 9.30am to 6pm on Sundays and Bank Holidays.

- 2.3 There is existing hardstanding to the front of the building that is currently used for informal car parking. This area would be changed into a car park providing 21 spaces (including one disabled space), and a 2.5m tall fence would be erected to separate this area from the hardstanding to the front of Unit 4.
- 2.4 During the processing of this application, it became apparent that the scale of the unit shown on the existing and proposed floorplans did not match the site location plan. The applicant was informed of this and revised plans were submitted showing the floorplans at the correct scale.

### **3. PLANNING CONSTRAINTS**

- 3.1 Environment Agency Flood Zone 3

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

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG).
- 4.2 Development Plan: Policies CP1, CP4, DM7 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017

### **5. LOCAL REPRESENTATIONS**

- 5.1 None

### **6. CONSULTATIONS**

- 6.1 Queenborough Town Council objects to the application, stating the following:

*“Object to the change of use for the following reasons: Concerns with heavy traffic use around the industrial estate and concerns with pedestrian safety regarding access to the site.”*

- 6.2 KCC Highways and Transportation – Initially commented stating the proposal does not meet the criteria to warrant involvement from the Highways Authority. Further comments were later sought as the parking provided (21 spaces) does not meet the parking requirements set out in Supplementary Planning Guidance SPG 4, where a class D2 unit of this size would require 24.5 spaces. Highways confirmed that they would not object to the scheme given how close it is to the maximum parking standard. There may be some parking overspill onto Cullet Drive but peak demand times for such a usage will generally be when the road is quieter.
- 6.3 Natural England – No comments.
- 6.4 Environment Agency – See standing advice.
- 6.5 Environmental Health – No objections, however due to the change of use for a potential contaminative use to a sensitive use, they recommend the inclusion of a standard contaminated land condition.

## **7. BACKGROUND PAPERS AND PLANS**

7.1 Plans and papers relating to application 19/501015/FULL.

## **8. APPRAISAL**

### Principle of Development

- 8.1 The proposed children's play centre would fall under Use Class D2 (assembly and leisure) and so would be very different in nature to the industrial use of Unit 5 and the surrounding units. I am mindful of the fact that the unit is currently vacant, and whilst it may be uncommon to see a building with D2 use in an industrial area, the benefit of this unit coming back into use again must be considered.
- 8.2 In terms of employment levels for the proposed use, the centre would provide 4 full time and 4 part-time jobs. It is difficult to assess if this level of employment is similar to the previous use of the unit as a vehicle repair centre. Nonetheless, I consider that the level of employment provided by the proposed children's play centre would be acceptable given the fact the unit is currently empty. I therefore believe the principle of the development is acceptable; however I do believe it would be appropriate to only grant temporary permission for a period of 5 years. This will allow the D2 use of the site to be re-assessed in 5 years time, which also ensures the industrial use of the unit is not lost in the long-term.

### Visual Impact

- 8.3 No external changes are proposed to the industrial unit. A fence is proposed along the northern boundary of the parking area to the front of the unit. It will be a standard galvanised palisade fence which would not amount to an incongruous feature in my view, given the industrial nature of the site. Taking into account the existing hardstanding to the front of the unit will remain unchanged, I do not consider it will be necessary to impose a hard and soft landscaping condition. I therefore believe the limited external changes to the site will not cause harm to the character or appearance of the area.

### Residential Amenity

- 8.4 The closest residential properties to the site lie over 300m away in Manor Road, to the west. Taking into account this distance, I do not consider the proposal will have any significant impact on the amenities of these residential properties. Concerning any potential impact on the surrounding industrial units, whilst the use of the site as a children's play centre will create some noise when the centre is open for business. The site is though in an industrial area, where noise created from the use of neighbouring sites is not uncommon. I therefore take the view that any noise created by the use of the unit will not be detrimental to the amenity of occupiers of the surrounding industrial units.

### Highways

- 8.5 A total of 21 parking spaces would be provided for the children's play centre. As mentioned at paragraph 6.2 above, I sought the view of KCC Highways due to the fact the parking provision is below the recommended amount of 24.5 spaces. The Highways

Authority raised no objection to this level of provision given how close it is to the maximum parking standard. Furthermore, whilst there could be some parking overspill onto Cullet Drive, the use of this unit will most likely intensify at the weekend, when the road will be generally quieter. I am therefore of the opinion that the parking provision at the site is adequate and there would be no detrimental impact on highway safety.

- 8.6 Queenborough Town Council have expressed concern about the high level of traffic on Cullet Drive and the potential issues to pedestrian safety when accessing the site. I note there is a pavement that runs along Cullet Drive, however given its location set away from residential areas, I consider it is unlikely that customers will walk to the site. The potential for accidents to occur is not something I believe should be a determining factor in the outcome of this application. Members will have noted the lack of objection from the Highway Authority on these grounds.

#### Flood Risk

- 8.7 The site lies within Flood Zone 3, and the Environment Agency provided comments on the application referring to their standing advice. I note that whilst the change of use will result in an increase in the number of people on site, the unit will not be used as overnight accommodation, and therefore does not represent “more vulnerable” development. As such I am of the view that the change of use of the unit will not require any specific flood mitigation measures.

#### Contamination

- 8.8 The Council’s Environmental Health team were consulted on the application. They have no objection to the change of use of the unit, but due to its previous industrial use, do recommend standard contaminated land conditions, which I have imposed below.

### **9. CONCLUSION**

- 9.1 I am of the opinion that the change of use of the unit into a children’s play centre would be acceptable in principle for a temporary period of time. The parking provision is acceptable and the proposal would not cause harm to visual or residential amenities in my view. Taking into account the above, I recommend temporary planning permission be granted.

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

- (1) The use hereby permitted shall cease on or before 15<sup>th</sup> August 2024.

Reason: In order that the position may be reviewed at the end of the period stated.

- (2) The premises shall be used for the purpose of a children’s leisure facility and for no other purpose, including any other purposes in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

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

- (3) The area shown on the submitted plan as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular

access thereto; such land and access thereto shall be provided prior to the commencement of use of the unit hereby permitted.

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

- (4) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with.

Reason: To ensure that the development complies with the approved details in the interests of protection of Controlled Water

- (5) Upon completion of the building works, the use hereby permitted shall not commence until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.

b) Details of any post-remedial 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.

c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

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

- (6) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Floor Plan (received 30.07.19), Parking Plan (ref. 11390.180219.01), Site Plan and Elevation Boundary Fence (ref. FPLJP).

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

### **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.



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<b>2.3 REFERENCE NO - 19/502722/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of a two storey side extension with glazed 'link' and new basement cinema room.		
<b>ADDRESS</b> Broadoak Farm Broadoak Road Milstead Sittingbourne Kent ME9 0RS		
<b>RECOMMENDATION</b> Approve		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection		
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b> Milstead	<b>APPLICANT</b> Mr Matt Brown <b>AGENT</b> Nicholas Hobbs Associates
<b>DECISION DUE DATE</b> 05/08/19		<b>PUBLICITY EXPIRY DATE</b> 10/07/19

**Planning History**

18/500547/FULL

Change of use of the adjacent paddock to create new driveway with access, 2-storey extension with glazed link and Juliette balcony to first floor, internal/external alterations including two rooflights and attic conversion, new basement cinema room under extension  
Withdrawn Decision Date: 21.06.2018

18/500548/LBC

Listed Building Consent for change of use of the adjacent paddock to create new driveway with access, 2-storey extension with glazed link and Juliette balcony to first floor, internal/external alterations including two rooflights and attic conversion, new basement cinema room under extension  
Withdrawn Decision Date: 21.06.2018

18/505773/FULL

Proposed replacement driveway to farmhouse through adjoining paddock, including change of use of land to residential use.

Refused Decision Date: 14.01.2019

Appeal Allowed Decision Date: 22.05.2019

SW/97/0271

Listed building consent for lobby extension to kitchen and internal alterations  
Approved Decision Date: 13.06.1997

SW/97/0270

Garage workshop/store, lobby extension to kitchen and internal ALTERATIONS  
Approved Decision Date: 13.06.1997

**1. DESCRIPTION OF SITE**

- 1.1 Broadoak Farm is a traditionally designed detached property located on a sizeable plot within the designated countryside. The house itself is set well back from the highway and the site is isolated and north of the M2, so not within the Kent Downs Area of Outstanding Natural Beauty. After recent enforcement investigations relating to

significant harmful alterations to the interior of the property, it has recently been de-listed following consultation with the Canterbury Archaeological Trust; and a planning appeal has very recently been allowed at the site for the construction of a new driveway across the field to the front. The area towards the front of the property is to be planted with over 200 fruit trees under proposals submitted in response to a landscaping condition imposed on the allowed appeal.

- 1.2 There is also a large detached garage towards the front of the property, and this sits directly in front of the proposed side extension.

## **2. PROPOSAL**

- 2.1 This application seeks planning permission for the erection of a two storey barn style side extension with a dramatic full height fully glazed link to the host dwelling; the link being set back from the main frontage.
- 2.2 The glazed link itself is to be constructed with a structural steel band separating the two single storey glazed elements above and below the band. The shading shown to the upper section of glazing signifies brise-soleil shading, and the link will be constructed in Pilkington Solar Control Glass or similar to prevent heat build-up with a zinc roof.
- 2.3 The extension has been designed to appear as an agricultural style building with a brick plinth and cedar cladding. The single storey element would be constructed with red brick in a Flemish bond and plain clay tiles with purpose made timber windows and doors.
- 2.4 The plans include a lower ground floor level within the footprint of the extension that would provide an additional leisure area.

## **3. PLANNING CONSTRAINTS**

- 3.1 None

## **4. POLICY AND CONSIDERATIONS**

Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:  
 CP4 (Design)  
 DM11 (Rural extensions)  
 DM14 (General development criteria)  
 DM16 (Alterations and extensions)

Supplementary Planning Guidance (SPG): 'Designing an Extension – A Householders Guide'

## **5. LOCAL REPRESENTATIONS**

- 5.1 None received

## **6. CONSULTATIONS**

- 6.1 Milstead Parish Council has commented as follows:

*"Milstead Parish Council has grave concerns with this planning application. The whole construction appears to be huge and way beyond the overall percentage increase allowed for permitted development. We believe there is*

*definitely the possibility of impact on neighbouring properties and on the AONB. This should be refused.*

*We would also like to bring to your attention the very large building of steel and blocks already being built there now which we are not aware of having received any plans for”.*

- 6.2 Please note the Council’s Planning Enforcement Team have investigated the building that the Parish Council refer to and have been informed that this is a pool house being erected under Class E Permitted Development rights. Please note also that the site does not lie within the Kent Downs AONB as the site is some 500m north of the M2.

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 All plans and documentation relating to 19/502722/FULL.

## **8. APPRAISAL**

- 8.1 The main considerations in the determination of this application is the effect of the proposals on residential and visual amenities, and the impact on the character of the countryside. The site lies within the designated countryside where development should remain modest, and I note the concerns of Milstead Parish Council to the size of the development. The guidance within the Council’s Supplementary Planning Guidance is that extensions in the rural area should not exceed 60% of the original floorspace. I have calculated the proposed additional floorspace and this comes in at just under the 60%, although I acknowledge that if the floor space of the lower ground floor level is taken in to consideration this does take it over that figure. That being said, the lower ground floor area sits below the footprint of the extension and does not add any additional visual bulk to the extension, meaning that it does not have any impact on visual amenity or rural character..
- 8.2 The main house appears as a former farmhouse and the design of the extension itself is in the form of a modern ‘barn’ giving the appearance of a group of agricultural buildings that would not be uncommon within this countryside location. The glazed link would add a contemporary touch, with the agent stating that this will be an entirely see-through element between the existing house and extension, clearly distinguishing the original house from the proposed extension. The additional planting and creation of an orchard to the front of the property resulting from the condition of the recently allowed appeal will also help to screen the development from the road.
- 8.3 With regards to residential amenity there is a small balcony proposed to the west elevation, however this is approximately 20m from the neighbouring boundary and I therefore am of the opinion that this would not give rise to any serious amenity concerns. The agent has agreed that this element requires further detailing and a condition has been recommended to ensure these details are approved prior to the construction of the balcony.

## **9. CONCLUSION**

- 9.1 Taking all matters into account, my view is that the proposed extension would not give rise to any harm to residential or visual amenity, and that the extension will be a unique

and positive addition to the area, complying with policies CP4, DM11, DM14 and DM16 of the Local Plan, creating a modern well designed addition to the host property.

**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) 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 the glass design and profiled zinc sheeting for the glazed link) have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (3) No development beyond the construction of foundations shall take place until manufacturer's details and colour specification of the external doors and windows to be used on the development hereby approved have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (4) No development beyond the construction of foundations shall take place until manufacturer's details and colour specification of the specific brise soleil product to be used on the development hereby approved have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (5) No development beyond the construction of foundations shall take place until manufacturer's details of the glazed balcony screen to be used on the development hereby approved has 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.

- (6) No development beyond the construction of foundations shall take place until the following key construction drawings have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

- a) 1:1 plan sections of the junctions of the glazed link with the existing house and extension
- b) 1:1 vertical section of upper and lower glazed panels and intervening metal band
- c) 1:1 vertical section of upper section of glazed panels with brise soleil and profile zinc sheet roof structure

Reason: In the interest of visual amenity.

- (7) The external part of the wood burning flue hereby approved shall be painted black and maintained as such thereafter.

Reason: in the interest of visual amenity.

- (8) Upon completion, no further enlargement of the property, whether permitted by Classes A or B of Part 1 of Schedule 2 and to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

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

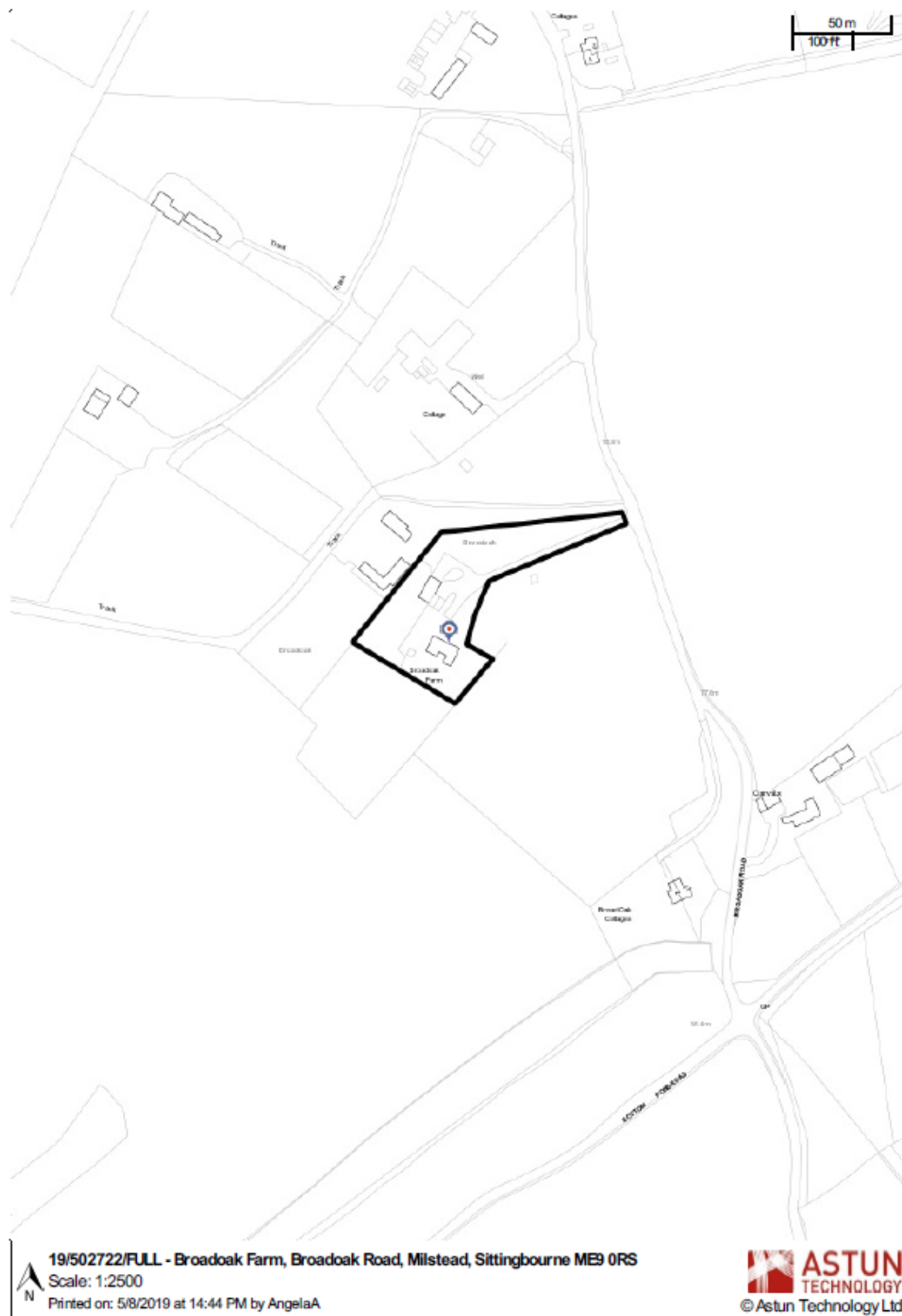
### **The Council's approach to the application**

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.



<b>2.4 REFERENCE NO - 16/503950/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Variation of Condition 2 of SW/13/0706 to allow a total of four residential mobile homes and four touring caravans.			
<b>ADDRESS</b> Orchard View, Otterham Quay Lane, Upchurch, ME8 8QR.			
<b>RECOMMENDATION</b> Grant, subject to securing a SAMMS contribution of £245.56.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The application would allow for family expansion on an existing authorised site, without giving rise to any serious amenity considerations.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council objection.			
<b>WARD</b> Hartlip, Newington & Upchurch		<b>PARISH/TOWN COUNCIL</b> Upchurch	<b>APPLICANT</b> Mrs Dennard <b>AGENT</b> BFSGC
<b>DECISION DUE DATE</b> 15/07/16		<b>PUBLICITY EXPIRY DATE</b> 15/07/16	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
SW/13/0706	Variation of condition (i) of planning permission SW/96/0329 to allow any gypsy family to live at the site.	Granted.	2013
Removal of the personal permission and opening up use of the site to any gypsy or traveller would not have caused any additional harm over and above use of the site by particular named individuals.			
SW/09/0881	Erection of dwelling house, together with use of part of site as a gypsy caravan site.	Refused, and dismissed at appeal.	2009
Permission refused for a dwelling on the grounds that the site lies outside of the built up area boundary, where permanent residential development is generally unacceptable, and loss of the wider site for gypsy and traveller accommodation would have impacted the supply of sites within the Borough. The Inspector supported the Council's decision in the subsequent appeal.			
SW/08/0800	Erection of dwelling house and cessation of gypsy use.	Refused.	2008
Permission refused for a dwelling on the grounds that the site lies outside of the built up area boundary, where permanent residential development is generally unacceptable, and loss of the wider site for gypsy and traveller accommodation would have impacted the supply of sites within the Borough.			
SW/04/1389	Variation of condition 2 of SW/04/0124 to allow stationing of touring caravan and erection of	Granted.	2004

	shed.		
SW/04/0124	Variation of condition (iii) of planning permission SW/96/0329 to allow the stationing of a third mobile home of the site.	Granted.	2004
SW/96/0329	Residential caravan pitch for one gypsy family (two caravans).	Granted.	1996

## 1.0 DESCRIPTION OF SITE

- 1.01 The application site is an existing authorised gypsy / traveller site located on Otterham Quay Lane, close to the Borough boundary with Medway. The site lies on the eastern side of the road, immediately to the north of the Three Sisters pub. It is rectangular, measuring approximately 92m deep by 15m wide and, due to changing land levels, is set slightly down from the pub. The front of the site is enclosed by brick entrance features and iron gates, and the site is enclosed on the three remaining sides by tall fencing and brick walls. The majority of the site is covered with brick paving, and there are two grassed areas to the front, adjacent to the gates.
- 1.02 To the south of the site is the Three Sisters pub, where an access road to parking at the rear of the pub runs the full length of the boundary. To the north is another residential gypsy / traveller site, but it appears to have been unused for many years and two caravans on the land are in poor condition. To the west are open fields, to the east is a residential dwelling known as 1 Mackland Cottages, and a residential estate (Littlefield Road and Homefield Drive) lies to the southwest.

## 2.0 PROPOSAL

- 2.01 This application seeks retrospective permission to vary the terms of condition 2 of planning permission SW/13/0706 to allow a maximum of 4 static caravans and 4 touring caravans to be stationed on the site at any one time. (SW/13/0706 is the current overarching permission for the site, with condition 2 restricting the number of caravans permitted on the site, but it is worth noting that three static caravans (and one tourer) were original permitted in 2004 under SW/04/1024.)
- 2.02 Condition 2 of SW/13/0706 states that *“the site shall not be used for more than three residential mobile homes and one caravan at any one time.”*
- 2.03 The static caravans are set in a line along the southern boundary, and the submitted block plan shows space for touring caravans to be stationed opposite them along the northern boundary. The existing utility block (a converted stable building) is positioned along the eastern boundary, and a timber storage / utility building is positioned along the southern boundary between the two middle static caravans. An existing area of lawn is retained at the front of the site, behind the gates.

## 3.0 SUMMARY INFORMATION

	Proposed
Site Area	1,401sqm / 0.1ha
No. of static caravans	4
No. of touring caravans	4
Parking Spaces	Min. 4



#### 4.0 PLANNING CONSTRAINTS

4.01 None.

#### 5.0 POLICY AND OTHER CONSIDERATIONS

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

5.01 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Both documents were released in 2012 but the PPTS was re-issued in August 2015 with amendments. Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for Gypsy and Traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.

5.02 I consider that the following extracts from NPPF paragraph 8 are particularly pertinent:

*Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

*a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

*c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and*

5.03 In relation to rural housing paras. 78 and 79 of the NPPF aim to restrict new housing in "isolated" locations where it would be unsustainable and wouldn't contribute towards the vitality of existing settlements.

5.04 In relation to conserving and enhancing the natural environment the NPPF, at paragraph 170, advises that valued landscapes and the intrinsic character and beauty of the wider countryside should be protected, while biodiversity and despoiled land should be improved.

## Planning Policy for Traveller Sites (PPTS)

- 5.05 The PPTS was originally published in March 2012 but it was re-issued in August 2015 with minor changes. Its main aims now are:

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

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

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

- 5.06 In terms of plan making the PPTS advice is that;

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

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

*travellers that may locate there or on others as a result of new development*

- f) avoid placing undue pressure on local infrastructure and services*
- g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
- h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.” (para 13 PPTS)*

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

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

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

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

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

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

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

*“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).” (para 27 PPTS).* I note that the last sentence above was added to this paragraph in the 2015 re-issue of PPTS.

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

*“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.”*

### **Swale Landscape Character and Biodiversity Appraisal SPD 2011**

- 5.10 The site and surrounding area are identified within the Swale Landscape and Biodiversity Appraisal Supplementary Planning Document (SPD) as falling within the Upchurch and Lower Halstow Fruit Belt area, where the document advises that the landscape should be “conserve and create” through conserving important views and landscape structures, and use of traditional local materials. However I do not consider that landscape impact is a significant potential objection to development here.

### **Bearing Fruits 2031: The Swale Borough Local Plan 2017 (adopted 26 July 2017)**

- 5.11 Policy DM10 (Gypsy and Traveller sites) largely relates to the retention of existing sites and the provision of new sites, with little commentary on applications to extend existing sites or increase the number of caravans, as applied for here. The policy does set out, however, that applications related to gypsy and traveller sites should not cause harm to visual or residential amenity; achieve safe levels of parking; be safe from flooding; and not introduce a scale of development that (in cumulation with other developments) dominates nearby settled communities.
- 5.12 Other relevant Local Plan policies are:
- CP4 (good design) requires all developments to be of a high standard of design and to contribute positively to the character of the area.
  - ST3 (The Swale settlement strategy) seeks to guide development to sustainable locations, close to shops, services, and amenities, in preference to less sustainable rural locations.
  - DM6 (vehicle access) sets out that all new developments need to provide safe, appropriate access to the highway network.
  - DM7 (vehicle parking) sets out that all development needs to provide appropriate levels of vehicle parking.

## **6.0 LOCAL REPRESENTATIONS**

- 6.01 Seven letters of objection have been submitted by local residents, raising the following summarised points:
- Discrepancy in the description [NB: description has been clarified with the agent, and corrected];
  - There have been frequent changes of occupancy, which does not encourage social cohesion;
  - Noise and disturbance from the site;
  - Allegations of anti-social behaviour at the site;

- There was a large number of caravans (up to 11) on the site for a considerable period (3 months) prior to the submission of this application, followed by a serious fire, which highlights the dangers of having too many units on the site;
- Additional units would exacerbate the danger of fire spreading and prevent safe egress from the site;
- The site is close to the junction of Otterham Quay Lane and Lower Rainham Road, and additional vehicles may pose a highway safety risk;
- *"Given the number of permitted traveller sites in Swale, I do not see any justification to increase the numbers further on this site;"*
- Impact on local property values;
- There is a large gypsy/traveller site on Oak Lane, no need to add further units here;
- Caravans sit very close to tall conifers, and electrical supplies are running through the trees – should be permanently wired in to mains;
- Fire risk to adjacent properties;
- Shouldn't be classified as travellers if they live permanently on one site;
- Additional touring caravans will reduce turning space on site;
- Site too small for additional caravans;
- Not possible to achieve required spacing between static units;
- Limited emergency services access;
- Additional gas bottles on site would be an increased hazard;
- Additional pollution from use of gas bottles; and
- The Council would not grant planning permission for 9 houses on the site.

## 7.0 CONSULTATIONS

### 7.01 Upchurch Parish Council objects to the application, commenting:

*"Upchurch Parish Council strongly objects to this application. We are very concerned about the over population of such a small site.*

*It is unclear whether the touring caravans mentioned in the application are to be lived in on the site or are for the residents of the proposed 4 static caravans to travel in?*

*The Council and surrounding residents of the site have grave concerns following the recent fire on the site (residents had to assist the occupants to safety), with regards to the Health and Safety issues. A large amount of commercial vehicles are regularly on the site and there is already overcrowding of caravans containing gas cylinders etc.*

*It would appear from prior applications that the site is for family members use only. Is the proposed static caravan for a family member?*

*There are also concerns with regards to drainage facilities for this amount of occupants, as far as the Council are aware there is no main drainage on site."*

### 7.02 The Parish Council submitted further comments following re-consultation in 2017, maintaining their objection:

*"Upchurch Parish Council has considered the application and strongly objects to the proposal. Councillors have very serious safety concerns as there is insufficient room to have so many units and people on the site.*

*Last year there was a fire on the site and part of a fence had to be removed to allow the residents to evacuate the site. Two of the vans were burnt out and another van had melted due to the intensity of the heat. Neighbours helped to move other vans away from the fire but the vans could not be evacuated properly. There is insufficient space between the units to be safe and gas cylinders and petrol is stored on the site increasing the risk should another fire occur.*

*The plan does not show the stable block at the back and the scale of the drawing is misleading.*

*The Parish Council is concerned about the density of the site and that there is insufficient room to put static vans and to be able to evacuate safely. There have been complaints from residents about the volume of traffic.*

*The Council's previous objections still stand as there is insufficient reduction in the number of units to make a material difference."*

- 7.03 KCC Highways & Transportation have no comments other than noting the scale of development falls below their protocol response threshold.

## **8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 The application is supported by relevant plans and drawings.

## **9.0 APPRAISAL**

### Principle

- 9.01 The principle of the use of the land as a residential gypsy / traveller caravan site has been established for over twenty years, following the grant of permission in 1996 under ref. SW/96/0329. At present a total of three static caravans and one touring caravan are allowed on the site, as approved in 2013 by SW/13/0706 (and also in 2004 under SW/04/1024, as above). These can be occupied by any gypsy or traveller, and are not restricted to a personal permission. The fundamental use of the land therefore can't be challenged under this application.
- 9.02 What this application seeks is to intensify the approved use through the stationing of an additional caravan on the site, for a total of four static caravans and four associated touring caravans, still to be used by gypsies / travellers. In that regard the applicants are known to officers as local gypsies and I have no reason to, or evidence before me, to contradict that.
- 9.03 I note local objections suggesting that the Council would not permit bricks and mortar housing on the site. This is true, but the legislation is clear that gypsy / traveller accommodation may be acceptable in rural locations where conventional housing may not. In that regard Members should give such comments little weight.

### Layout and residential amenity

- 9.04 The additional static caravan would be placed on the southern boundary in line with the existing caravans. Each static caravan would be a minimum of 6m from the next (in order to comply with site licencing requirements, outside of the planning process); the front unit would be set back a minimum of 22m from the access gates; and each of the static caravans would be a minimum of 2m from the southern site boundary.

There is approximately 9m to the front of each static caravan to the northern boundary, which is sufficient space to park four touring caravans in a line and maintain vehicle and pedestrian access down the centre of the site. Vehicle turning space is available at the front of the site, adjacent to the grass lawn area, which itself provides a private outdoor amenity space.

- 9.05 The additional caravan is required to cope with family expansion, so living in relatively close proximity to one another would not be a significant concern for the applicants. But it is evident from the above that there is sufficient space on the site to comfortably accommodate a fourth static and four tourers without the site being cramped, or overcrowded, or seriously affecting the amenity of the residents. In that regard I have no serious concerns, disagree with the Parish Council's objections, and do not consider that there are any justifiable grounds for refusal on the basis of layout, overcrowding, or overdevelopment of the site.
- 9.06 An additional static and touring caravans for residential use would not, in itself, give rise to any serious amenity issues for neighbouring residents over and above the approved use. I note objections for residents raising concern about noise and disturbance from the site, but this could be true of any residential property and could be considered by the Council's environmental wardens if any complaints were received. Allegations of anti-social behaviour are not a planning consideration and should be pursued through other channels if/when necessary.

#### Visual amenity

- 9.07 The addition of caravans (one static and three tourers) to an existing approved site would have little impact upon the character and appearance of the street scene and the wider countryside, in my opinion. Particularly so given the linear layout of the site, whereby the caravans are behind one another as viewed from the road and additional caravans would therefore not be overly prominent or intrusive in views from any public vantage point. The existing entrance gates and walls also succeed in partially screening the site from the road. I have no serious concerns in this regard.

#### Highways and parking

- 9.08 The site has an existing approved vehicle access on to Otterham Quay Lane. Because the additional caravans are to cope with family expansion in real terms there will be no additional vehicle movements to/from the site over the existing lawful use – the dependants living in the additional static would have been coming and going from the site in any instance.
- 9.09 As set out at 9.04 above there is ample space on site to accommodate vehicle parking (for at least one vehicle per unit) and turning while maintaining clear access down the centre of the site. Vehicles can be parked between the static caravans if required, and the frontage turning area measures roughly 19m x 9m, which is more than sufficient to allow for both parking and turning.

#### Ecology

- 9.10 The application seeks consent for an additional unit of accommodation and the site lies within 6km of the SPA. A SAMMS contribution (£245.56) is therefore required to mitigate potential impacts upon the SPA and must be secured before consent can be granted. If Members are minded to grant permission this can be secured by completion of a simple pro-forma.

Other matters

- 9.11 I note objections from locals and the Parish Council in respect of a fire on the site some time ago. However, the layout shows the caravans appropriately spaced (min 6m between each) and with an access aisle down the centre of the site, and this is as far as the matter can be considered under the planning regulations.
- 9.12 I understand local concern regarding impact upon local property values, sewage, storage of gas bottles and petrol, and pollution from use of gas bottles but these are not planning considerations and can't be given any weight here, unfortunately.

**10.0 CONCLUSION**

- 10.01 This application seeks permission to site an additional static caravan and touring caravans on an existing residential gypsy / traveller site, for a total of 4 statics and 4 tourers. The caravans would be appropriately spaced, sufficient parking and turning is available on the site, and the development would not give rise to any serious issues of residential amenity, highway safety, or additional harm to the character or appearance of the countryside.
- 10.02 I therefore recommend that planning permission should be granted subject to receipt of a standard SAMMS payment (and completion of the accompanying pro-forma).

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

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to the DCLG Planning Policy for Traveller Sites.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- 2) The site shall not be used for more than four static caravans and four touring caravans at any one time.

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

- 3) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land, no vehicle over 3.5 tonnes and no more than one 3.5 tonne vehicle shall be stationed, parked or stored on the land.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- 4) The development hereby permitted shall be carried out in accordance with the following plan: BP-03-2019.

Reason: To accord with the application and in the interests of proper planning.



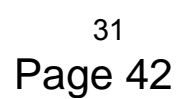
**THE COUNCIL'S APPROACH TO THIS APPLICATION**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance the applicant/agent was advised of minor changes required to the application and these were agreed, and 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.



**PLANNING COMMITTEE – 15 AUGUST 2019****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO - 19/500764/OUT</b>			
<b>APPLICATION PROPOSAL</b>			
Outline application (all matters reserved except access) for the demolition of former farm building/garage and erection of 10no. two, three and four bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane.			
<b>ADDRESS</b> Land Adjoining Westfield House Breach Lane Lower Halstow Kent ME9 7AA			
<b>RECOMMENDATION</b> Refusal			
<b>SUMMARY OF REASONS FOR REFUSAL</b>			
The proposed development represents unsustainable development and therefore fails to comply with the requirements of paragraph 8, 11 and 79 of the National Planning Policy Framework 2018.			
Future occupiers would be largely dependent on the private car to access a wider range of facilities and to meet everyday needs, and the proposal would have a harmful impact upon the character and appearance of the rural area and countryside. This harm, both significantly and demonstrably, outweighs any benefits from the proposal.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Called in by Cllr. Woodford irrespective of the officer recommendation			
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Lower Halstow	<b>APPLICANT</b> Mr & Mrs Keith Tress <b>AGENT</b> Penshurst Planning Ltd	
<b>DECISION DUE DATE</b> EoT: 23/08/2019	<b>PUBLICITY EXPIRY DATE</b> 14/06/19	<b>OFFICER SITE VISIT DATE</b> 17/05/2019	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
17/502046/OUT	Outline application (Some Matters Reserved) for erection of nine dwellings and garages, new access, with associated landscaping and parking - Access to be sought at this stage.	Refused	11.07.2017
<b>Summarise Reasons</b>			
1. <i>The application site is located outside of the built confines of Lower Halstow and within the open countryside where the Council's adopted and emerging Local Plan policies aim to restrict residential development other than in specific circumstances. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside by virtue of its location and likely layout and form, and would be contrary to policies ST3, CP3, CP4 and DM14 of the emerging Swale Borough Local Plan "Bearing Fruits 2031", and policies E1 and E19 of the adopted Swale Borough Local Plan.</i>			

2. *The Reptile Survey submitted with the application does not accord with Natural England standing advice regarding the number of visits required to establish a population estimate, and does not provide sufficient information on the location or suitability of an off site receptor site. On this basis, the survey fails to suitably demonstrate the presence of protected species on the site, or adequate mitigation measures. This would be harmful to biodiversity and contrary to policies E11 of the adopted Swale Borough Local Plan 2008 and DM28 of the emerging Swale Borough Local Plan "Bearing Fruits 2031".*

## 1. DESCRIPTION OF SITE

- 1.1 The application site relates to two parcels of land on the west side of Breach Lane. The parcels are separated by a dwelling at Westfield House.
- 1.2 Both parcels are essentially flat and open although there is natural landscaping and scrub on both sites, including scrub with small-medium trees (hawthorn, elder, English elm, willow) on the western boundary of the northern site and some small fruit trees on the southern site. The north parcel has a small building on the west side, and some former areas of hardstanding which are overgrown and disused. The planning statement submitted with the application explains that the southern site was formerly used as allotments and the building / hardstanding on the northern site was in connection with agriculture and informal car parking. The application form notes the allotment use ceased in 2014 and the car park circa 2006.
- 1.3 Breach Lane runs to the east of the northern parcel and to the east and south of the southern parcel. There are residential dwellings situated on the opposite side of Breach Lane, including a row of 17 no. two storey terraced dwellings known as Westfield Cottages situated opposite the proposal sites.
- 1.4 The sites are located approx. 170m to the south of Lower Halstow, and fall outside of the built confines of the village. The village of Lower Halstow includes the following facilities; primary school, pre-school, recreation ground including play equipment, church, community hall, retail convenience store, public house, sports club (including cricket and yacht), bed and breakfast accommodations, building trade services.
- 1.5 There is a public right of way (footpath, ZR43) situated to the north of the site.

## 2. PROPOSAL

- 2.1 This is an outline planning application for the demolition of a former farm building/garage and erection of 10 no. two, three and four bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane. All matters other than access are reserved for future consideration.
- 2.2 The proposed development would have a density of 19 dwellings per hectare across the two sites combined.
- 2.3 Indicative plans have been submitted which show that six dwellings could be accommodated on the southern parcel (site A) and four dwellings on the northern

parcel (site B). The dwellings would be a mix of detached and semi-detached properties with some dwelling having detached garages. The proposed mix would 2 x 2 bed semi-detached dwellings, 4 x 3 bed semi-detached dwellings and 4 x 4 bed detached dwellings. An indicative plan showing street scene views outlines that the dwellings would be two storey in form with a mix of building heights and form. Sites A & B would have independent vehicular accesses from Breach Lane.

- 2.4 The submitted plans and information show the widening of Breach Lane along the eastern sections of sites A & B, which would be widened by up to 2m resulting in a maximum width of 7.5m. The section of highway to the east of Westfield House would not be widened. The proposals includes the provision of a pedestrian footway and tactile pedestrian crossover points on both sites A & B which would connect to the existing footpath on the opposite side of Breach Lane which would be altered by a dropped kerb and tactile paving.
- 2.5 The supporting information outlines that the proposed housing would enable, fund and deliver the highway improvements with regard to reducing road safety risks and improving traffic flow along this stretch of Breach Lane
- 2.6 As noted above, a previous outline application for 9 dwellings on the site was refused under application reference 17/502046/OUT. This application was refused for the following reasons:
1. *The application site is located outside of the built confines of Lower Halstow and within the open countryside where the Council's adopted and emerging Local Plan policies aim to restrict residential development other than in specific circumstances. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside by virtue of its location and likely layout and form, and would be contrary to policies ST3, CP3, CP4 and DM14 of the emerging Swale Borough Local Plan "Bearing Fruits 2031", and policies E1 and E19 of the adopted Swale Borough Local Plan.*
  2. *The Reptile Survey submitted with the application does not accord with Natural England standing advice regarding the number of visits required to establish a population estimate, and does not provide sufficient information on the location or suitability of an off site receptor site. On this basis, the survey fails to suitably demonstrate the presence of protected species on the site, or adequate mitigation measures. This would be harmful to biodiversity and contrary to policies E11 of the adopted Swale Borough Local Plan 2008 and DM28 of the emerging Swale Borough Local Plan "Bearing Fruits 2031".*
- 2.7 The current application proposes an additional dwelling on site to be situated in the southern parcel (site A). In contrast to the previous application the proposal also includes alterations to Breach Lane such as the part widening of Breach Lane.

### 3. SUMMARY INFORMATION

	Existing	Refused 17/502046/OUT	Proposed	Change (+/-)
Site Area (ha)	0.53	0.53	0.53	N/A
Approximate Ridge	4.5m	7m - 9.5m	7m - 9.5m	+2.5m - 5m

Height (m)				
Approximate Eaves Height (m)	3m	5m - 5.4m	5m - 5.4m	+2m - 2.4m
No. of Storeys	1	2	2	+ 1
Parking Spaces	0	18	27	+ 27
No. of Residential Units	0	9	10	+ 10
No. of Affordable Units	0	0	0	0

#### 4. PLANNING CONSTRAINTS

Rights of way – (footpath, ZR43) situated to the north of the site.

#### 5. POLICY AND CONSIDERATIONS

- 5.1 The National Planning Policy Framework (NPPF): Paragraphs 8 (sustainable development); 11 (The presumption in favour of sustainable development); 55 (re-use of redundant buildings); 59 – 76 (delivering a sufficient supply of homes); 77 – 79 (Rural housing); 127 and 130 (good design); 148 (transition to low carbon future); 165 (sustainable drainage systems); 170 (enhance the natural and local environment) are relevant to this proposal.
- 5.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (delivering sustainable development in Swale); ST3 (the Swale settlement strategy); ST4 (Meeting the Local Plan development targets); ST5 (The Sittingbourne area strategy); CP2 (Promoting sustainable transport); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); DM6 (managing transport demand and impact); DM7 (Vehicle parking); DM14 (general development criteria); DM19 (Sustainable design and construction); DM21 (sustainable drainage / flood mitigation); DM24 (conserving and enhancing valued landscapes); DM28 (biodiversity conservation); DM29 (Woodlands, trees and hedges); DM31 (agricultural land).
- 5.3 Landscape SPD – Swale Landscape Character and Biodiversity Appraisal 2011. The site falls within character area 32: Upchurch and Lower Halstow which falls within the Fruit Belt Landscape Types. The landscape condition is described as 'moderate' with a 'moderate' sensitivity. The guidelines for this area are to conserve and create.

#### 6. LOCAL REPRESENTATIONS

- 6.1 Sixteen letters and emails of objection have been received. Their content may be summarised as follows:
- Does not overcome first reason of refusal for 17/502046/OUT
  - Contrary to policies ST3, CP3, CP4 and DM14 of the emerging Swale Borough Local Plan "Bearing Fruits 2031", and policies E1 and E19 of the adopted Swale Borough Local Plan.
  - Contrary to NPPF (paras 136, 137, 138 and 140)
  - Not sustainable development
  - Harm the character of the area; fails to reflect local character; contrary to pattern of development in area
  - Fail to protect the intrinsic value, tranquillity and beauty of the countryside by virtue of location, layout and form.
  - Overdevelopment of site

- Insufficient space for landscaping
- Harm to residential amenity: loss of privacy and overlooking; noise; loss of light
- Harm to outlook
- Lack of existing parking and increased pressure on parking
- Lack of parking within site; residents and visitor; construction vehicles
- Local public transport is limited resulting in reliance on car
- Increased traffic
- Increased highway safety risk along Breach Lane; new access points; lack of visibility and sight lines; increased dwellings; blind bend/corners; pinch point and bottleneck next to Westfield House
- Lack of infrastructure; sewers; footpath
- Increased pressure on services; nursery and primary school; doctors surgeries
- Harm to wildlife: water voles; birds; bees; rabbits; owls; bats; removal of trees
- Loss of agricultural land
- Loss of greenfield land (referred to as green belt land in representations)
- New housing will not be affordable
- Reduction in house value
- Breach Lane already floods, flood risk would increase due to additional surface water and foul water drainage
- Set a precedent to develop greenfield sites
- Contrary to Human Rights Act (Protocol 1)

6.2 Five letters and emails of support have been received. Their content may be summarised as follows:

- Suitably designed
- Affordable housing needed
- Site currently untidy and eyesore
- Village will be enhanced
- Benefit local businesses
- Suitable for young/first time buyers
- Good choice of local schools nearby
- Retain younger families within village
- Road widening will be a benefit; for both vehicular users and pedestrians
- Improve highway safety
- Site has sufficient parking ensuring no on-street parking on Breach Lane from development site
- Little impact on Westfield residents
- Reduce traffic
- Alternative is selling to travelling community

## 7. CONSULTATIONS

7.1 **Lower Halstow Parish Council** Object for the following summarised reasons:

03/04/2019 and 26/07/2019:

- *Outside the built up area of Lower Halstow as defined in the Swale Plan*
- *Insufficient parking in the area*

7.2 **Natural England** raise no objection

*18/03/2019: Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s).*

**7.3 NHS; Swale Clinical Commissioning Group** raise no objection.

*05/04/2019: Requested a S.106 financial contribution of £360 per new resident (£360 x 24) which equates to a financial contribution of £8640 towards expanding existing facilities within the vicinity of the development.*

**7.4 Southern Water** raised no objection.

*20/03/2019: Requested informative regarding connection to public sewerage system if the application is approved. Southern Water note there is a communication pipe on site.*

**7.5 KCC Drainage** – Initial response recommend that the application is not determined until 'a complete surface water drainage strategy' has been provided (01/07/2019)

*05/03/2019: No surface water drainage strategy has been provided. We would therefore recommend the application is not determined until a complete surface water drainage strategy has been provided for review.*

*01/07/2019: Subsequent response advised no objection in the principle to the development. Note that the half drain times provided for the 100 year storm events have a considerable time frame to drain down. We ask that the design is reviewed to reduce the half drain times and additional calculations are submitted to demonstrate that the half drain time for the 30 year storm events are below 24 hours. We would accept for this to be demonstrated at the time of a reserved matters application. Raise no objection subject to conditions regarding surface water drainage and a detailed sustainable surface water drainage scheme.*

**7.6 KCC Ecology** – No objection subject to conditions

*21/03/2019: We are satisfied that an appropriate level of ecological survey work has been carried out at this time but advise that clarification is sought regarding the proposed reptile mitigation. Clarification is sought regarding the effort to seek potential receptor sites near/adjacent the proposed development site.*

*The detailed mitigation strategy for the site can be secured by a condition requiring the submission and implementation of a Biodiversity Method Statement.*

*A condition requiring the submission and implementation of an Ecological Design Strategy will ensure that the proposed development provides opportunities for wildlife by retaining boundary habitats and providing enhancements as recommended within the Preliminary Ecological Appraisal.*

*A condition requiring a bat-sensitive lighting strategy will help to minimise potential impacts to foraging and commuting bats in the area.*

*The development includes proposals for new dwellings within the zone of influence (6km) of The Swale Special Protection Area (SPAs) and Wetland of International Importance under the Ramsar Convention (Ramsar Site). Swale Borough Council will need to ensure that the proposals fully adhere to the agreed approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMM) to mitigate for*



*additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation*

*05/04/2019: I have reviewed the information (regarding receptor sites) and the justification for site selection is fine. In terms of the potential need for a reptile survey, given the relatively recent habitat creation (assuming it was completed last year?) and that no reptiles have as yet been translocated, I don't think a reptile survey is necessary at this time. I can't recall whether any monitoring is included within the mitigation strategy but this would be advisable if not.*

## **7.7 KCC Highways and Transportation – No objection**

*22/03/2019: this application does not seek to materially alter access matters from the proposals under application ref. SW/17/502046/OUT, which was considered acceptable by us. The proposed road widening is recognized as a measure that will further strengthen the application in terms of accessibility and resultant highway safety and capacity, as well as providing a benefit to local road users. I would, however, wish to make the following observations on the plans:*

*1) The proposed road widening could possibly lead to an assumption on the part of local residents, that Breach Lane could then accommodate on-street parking on both sides, which would negate the benefits being offered by the scheme. I would suggest that the possibility of double yellow lines along the site frontages be investigated by way of a best endeavours condition or similar, along with the removal of such at mouth of the access to Site B.*

*2) I support the findings of the submitted Road Safety Audit although we would request to see details of the speed survey and other changes, as alluded to in the designer's response.*

*3) I would also like confirmation on a plan of the proposed surface treatment of the access roads.*

*Otherwise, I am confident that the layout as presented will preclude parking overspill onto Breach Lane, although such matters can be fully addressed at the reserved matters stage*

*13/06/2019: Further to my previous comments dated 22nd March 2019 I confirm that provided the following requirements are secured by condition or planning obligation, then I would raise no further objection on behalf of the local highway authority;*

- the submission of a construction management plan;*
- completion and maintenance of the access prior to the use of the site;*
- provision and maintenance of visibility splays;*
- measures to prevent discharge of surface water onto the highway;*
- highway works as shown in Drawing 1076-SK03A will need to be delivered by the applicant via a Section 278 agreement with this authority prior to the use of the site commencing.*

- 17/06/2019: *Further to previous comments, KCC Highways note that the offer to apply for a Traffic Regulation Order (TRO) on the east side of Breach Lane alongside no. 18, as per 4.3.1 in the design response to the Stage 1 RSA, is not a measure that KCC Highways would consider necessary in order to make the highway improvements and proposed pedestrian crossings acceptable. KCC Highways are of the view that although these are important in linking the development to the wider footway network the number of actual users would not necessitate more intensive measures that may compromise the availability of on-street parking for local residents.*

7.8 **Kent Police** raise no objection (21/03/2019)

7.9 **Environmental Protection Team Leader** raises no objection

18/03/2019: No objection subject to conditions seeking further details for land contamination and programme for dust suppression to be sought via condition. Conditions also requested for construction hours and asbestos.

## 8. BACKGROUND PAPERS AND PLANS

- 8.1 The application has been supported by a site location plan; existing plans and highway network; a proposed block plan; illustrative street scene; proposed highway alterations and surface water drainage scheme. The application has been supported by a traffic survey; preliminary ecology appraisal; reptile mitigation strategy; ecological enhancement strategy and management plan; planning design and access statement; planning design and access statement addendum; surface water drainage scheme; agent letter to KCC Highways. The application has also been supported by historic maps, aerial images and photographs.

## 9. APPRAISAL

### Principle of Development and Visual Impact

- 9.1 The site is located outside of the built area boundary of Lower Halstow. The main relevant planning policy is ST3 of the Local Plan, which states that at locations in the open countryside outside the defined built up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.
- 9.2 The National Planning Policy Guidance (NPPF) seeks to promote sustainable development in rural areas, and housing should be located where it will enhance or maintain the vitality of rural communities and avoid isolated new homes in the countryside.
- 9.3 Paragraph 79 of the NPPF states that the local planning authority (LPA) should avoid isolated homes in the countryside unless one or more of the following circumstances apply:
- a) *there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;*
  - b) *the development would represent the optimal viable use of a heritage asset or*

- would be appropriate enabling development to secure the future of heritage assets;*
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;*
- d) the development would involve the subdivision of an existing residential dwelling; or*
- e) the design is of exceptional quality, in that it:*
  - is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
  - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

9.4 It is considered that the proposal would not meet with any of these circumstances.

9.5 Paragraphs 11 and 73 of the NPPF requires the Council to meet the full, objectively assessed needs (OAN) for housing and other uses as well as any needs that cannot be met within neighbouring areas. In addition, the Council should annually update a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional 5% buffer. The Council's latest position was published in February 2019 following the publication of the Housing Delivery Test (HDT) that saw the Council meeting 74% of its requirement. As a result, a 20% buffer (rather than a 5%) buffer must be applied to the housing land supply figures in assessing the 5 year HLS position. To this end, the Council can demonstrate a supply of 4.6 years and therefore cannot demonstrate a 5 year housing supply. In such situations the NPPF advises that plans and decisions should apply a presumption in favour of sustainable development. For making decisions this means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

*11.d) i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or 11.d) ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

9.6 The application falls to be considered under ii), as there are no restrictive policies under i) that are relevant to this site. Therefore it needs to be considered whether the proposal constitutes sustainable development.

9.7 Para 11 of the NPPF details that there is a presumption in favour of sustainable development which should be seen as a golden thread running through decision taking.

9.8 Para 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways:

a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of

present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 9.9 Paragraph 8 of the NPPF sets out in c) that part of the environmental objective of sustainable development is to move to a low carbon economy. Paragraph 78 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It can be seen that sustainability is thus a multi-faceted and broad-based concept. It is often necessary to weigh certain attributes against each other in order to arrive at a balanced position.

#### *Environmental Role*

- 9.10 With regard to the proposed dwellings, a key consideration is whether future occupants of the dwellings would be likely to meet some/all day-to-day needs by walking to facilities, therefore reducing the need to travel by private car which would reduce greenhouse gas emissions (para 148 of the NPPF).
- 9.11 The site sits outside the built up settlement boundary of Lower Halstow and is situated within the open countryside. Of relevance if the settlement hierarchy strategy outlined in the adopted Local Plan. Lower Halstow and nearby Upchurch are small villages with a limited range of shops and services, they are identified as tier 5 settlements, below Rural Local Service Centres because it has a more limited range of shops and services and populations will need to travel to other centres for more major shopping, leisure and employment needs and to meet some day-to-day needs.
- 9.12 The site sits outside the built up settlement boundary of Lower Halstow. The site is approximately 170m from the edge of the settlement boundary accessed via Breach Lane, which has a footpath on the opposite side of the highway, alternatively the site is approximately 370m from the edge of the settlement boundary accessed via Breach Lane and public footpath ZR43 which is across a field. Both routes are unlit until the settlement boundary. The supporting information notes there is a bus stop to the north of site B, however this was not evident from the site visit, and therefore whilst the bus route is via Breach Lane, it appears the closest bus stops are near The Street, approximately 0.56km (0.35miles) from the site. Lower Halstow is serviced by routes 327 (Sittingbourne – Chatham and vice versa), route 328 (Upchurch – Sittingbourne) and 372 (school service to Sittingbourne). Across the non school bus routes the frequency varies with approximately one service every two hours towards Rainham/Chatham (between 7.30am-9.30am and 1pm-3.30pm or 5.30pm on non-school days) and one service every two hours towards Sittingbourne (between 7.30am-9.30am and 2pm-4pm or 6pm on non-school days). The level of bus services is less frequent at weekends, with no services on bank holidays.
- 9.13 The nearest settlement that offers a wider range of services including a train station is the village of Newington which is approximately 2.7km from the site. However, there are

infrequent bus services between Newington and Lower Halstow, nor are there safe/convenient facilities to access Newington for pedestrians or cyclists.

- 9.14 Taking into account the above, it is considered that the location of the site is distant from main public transport routes and services and it is considered that any future residents of the site would be heavily reliant on the use of the car, especially due to the lack of a lit footpath until the settlement boundary and limited public transport options. As such it is considered that re-development of the site for housing would be contrary to the Council's settlement strategy which requires residential development to be steered to sustainable locations. I therefore find that the site would not be a suitable location for the proposed development, having regard to the settlement strategy and accessibility to services and facilities. It would thus be in conflict with policies ST1 and ST3 of the Local Plan, which seek, amongst other matters, to deliver sustainable development that accords with the settlement strategy by restricting development in the open countryside. Therefore the proposal would not contribute toward a move to a low carbon future as advocated by paragraph 148 of the NPPF. This is considered to be a significant negative in terms of whether the proposal comprises sustainable development, and a significant adverse impact.
- 9.15 As evident from the site visit, Site A is comprised of unmanaged natural landscaping including grass, shrub and tree cover and is not considered to be brownfield or previously developed land. Site B previously had areas of hardstanding which is now overgrown, and there is an outbuilding on part of the site which the supporting information notes was last in use as a garage. The NPPF definition of brownfield / previously developed land in Annex 2 excludes *'land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.'* The existing outbuilding would be considered previously developed, however the remainder of the site due to its current overgrown condition falls within this description and as such should not be classified as brownfield or previously developed land. Therefore the majority of the development would take place on an undeveloped site which is considered would have a significant adverse impact.

#### *Social and Economic Role*

- 9.16 The proposal is for 10 dwellings ( 2 x 2 bed, 4 x 3 bed and 4 x 4 bed) which would be of some social benefit. As outlined above, the site falls outside the settlement boundary of Lower Halstow and is situated away from the limited services within the village. Furthermore the site is considered to be poorly related to larger settlements including the Rural Service Centre at Newington, or the larger settlements of Sittingbourne and Rainham. So whilst future occupiers would make some contribution to the social vitality of these settlements, as they are likely to rely on services outside the area, such as secondary schools, healthcare and employment it is not considered that this would be significant. It is considered that there would be a neutral impact.
- 9.17 As economic benefits from the construction of these dwellings would be short-term, these are limited and would carry little weight. It is considered that there would be a neutral impact.
- 9.18 The proposed highway works in terms of road widening and inclusion of two pedestrian crossings have been put forward as enabling development to justify the proposed residential dwellings. The proposed road widening would provide a small scale

localised benefit, however it is not considered that this scale of residential development would require such alterations to the existing highway network. KCC Highways have confirmed that if the scheme did not include the proposed highway alterations, that they would not raise an objection to the development, nor would they seek such works as a requirement. Whilst there would be a small localised benefit, this must be weighed up against the significant harm the development would create and it is not considered that this would outweigh the significant harm caused.

#### *Principle of Development Summary*

- 9.19 The proposal site is considered to be in an unsustainable location. Whilst a small part of the site is previously development land, the majority of the site comprises undeveloped land. Furthermore future occupiers would be largely dependent on the private car to access a wider range of facilities and to meet everyday needs which is considered to be a significant negative impact. The proposal is considered to have a harmful impact upon the character and appearance of the rural area and countryside (addressed below in visual impact section). The social and economic benefits of the additional dwellings are considered to be neutral. When assessed against para 11 of the NPPF, it is considered that the adverse impacts in terms of conflict with the environmental objectives of the Framework significantly and demonstrably outweigh the benefits of the proposal, even when the housing deficit and proposed road widening is considered. As such, the proposal is not considered to comprise sustainable development, and the principle of this development is not considered acceptable.

#### *Visual Impact (Environmental)*

- 9.20 The two sites are open, undeveloped and rural in character and appearance. They form part of the generally open landscape to the south of Lower Halstow, with the line of terraced cottages to the east of the sites being the exception to this. Notwithstanding this, the area is open and rural in character.
- 9.21 The development of these two sites would have an urbanising impact on the area harmful to the character and appearance of the countryside. Furthermore, notwithstanding that this is an outline application; I consider the nature of the development proposed would be low density, sprawling and suburban in character. This would be alien to the compact terraces opposite and to the more simple and organic built form that normally characterises rural areas.
- 9.22 Policies ST3, CP3, CP4, DM14 and DM24 of the Local Plan seek to ensure that development is steered to the right locations, is of high quality design appropriate to its context, and strengthens / reinforces local distinctiveness. The development of housing in this location would not be appropriate to its rural context and would harm the character and appearance and intrinsic value, beauty and functioning of the countryside. In addition, the likely form of the units would fail to reinforce local distinctiveness and, as such, would be contrary to the above policies. This is considered to be a significant negative impact and would be contrary to the aims of paragraphs 127, 130 and 170 of the NPPF as it would not significantly enhance its immediate setting, and it would not be sensitive to the defining characteristics of the local area due to the harmful impact on the countryside and contrary to the aims of the Swale Landscape Character and Biodiversity Appraisal 2011 SPD which seeks to restore the rural environment whilst creating a landscape structure that will improve the

areas strength of character. The landscape harm would not be outweighed by contributions to housing supply.

### **Residential Amenity**

- 9.23 DM14 of the Local Plan states that all developments should cause no significant harm to the amenities of surrounding uses or area. The detailed scheme for the new dwellings would be secured at the reserved matters stage and this will include the design and form of the dwellings including details such as window/door placement and details of boundary treatments.
- 9.24 The closest residential property is Westfield House which is sandwiched in between the two sites subject to this application. Whilst layout and design are matters for future consideration, the application shows an illustrative layout which avoids any direct overlooking of this property, and a good degree of space can be maintained between it and the development.
- 9.25 The properties on the opposite side of Breach Lane would be in direct view of the development. However impact on views is not a material planning consideration. Again, the illustrative layout as shown indicates that good separation distances and appropriate layouts could be created to avoid any unacceptable impacts on these existing properties.
- 9.26 Taking the above into account, it is considered that the development could be designed to avoid unacceptable impacts on neighbours, and comply with the above policies.

### **Highways and Parking**

- 9.27 Comments received by neighbours raise concerns regarding highway safety, increased traffic, lack of existing parking provision and increased pressure on parking resulting from the proposed development.
- 9.28 The proposed access and parking arrangements for the sites are similar to the previous application (17/502046/OUT), but the previous application did not include any road widening. The previous assessment is relevant to this current application, and under 17/502046/OUT KCC Highways did not object to the application on highways safety grounds. Nor was any objection raised to the location of the access points to each site. It was also concluded due to the low density of the development and sufficient space for on site parking provision that the development would not be likely to increase parking pressure on Breach Lane or displace existing parking. It should be noted that the proposed road widening did not form part of the previous application; furthermore, KCC Highways did not request this as a requirement to facilitate the development. The previous application did not include a reason for refusal on the grounds of highway safety or lack of parking provision.
- 9.29 KCC Highways confirmed under this application that the proposed vehicular access points remain acceptable. Furthermore KCC Highways have outlined they would not raise an objection to the application on accessibility or highways safety grounds if the proposed road widening was omitted from the scheme. The current scheme would have a similar impact in terms of access to the previously refused scheme, this is due to the small scale of the development, associated traffic movements and suitable level of visibility available at the vehicular access points, and thus it is not considered that the

level of development would necessitate the proposed road widening scheme. The supporting information outlines that the proposed highways works should be considered as enabling development to justify the proposed housing on the site. However for the reasons outlined above, the Council do not consider that the highways works are necessary in terms of highways safety or access.

- 9.30 Notwithstanding the above, KCC Highways outline that the road widening is a recognised measure that will strengthen the application in terms of accessibility and resultant highway safety and capacity, as well as providing a benefit to local road users. KCC Highways requested further information through the application process including the submission of details of the speed survey; surface treatment of the access roads; and consideration of double yellow lines along the site frontage. This information and an amended plan showing alterations to the highway was submitted which note the provision of double yellow lines along the western frontage, and pedestrian crossing points between the sites and existing footpath on the opposite side of Breach Lane. KCC Highways have confirmed they raise no objection to the application subject to conditions or planning obligations securing the submission of a construction management plan; completion and maintenance of the access prior to the use of the site; provision and maintenance of visibility splays; measures to prevent discharge of surface water onto the highway; and that the highway works as shown in Drawing 1076-SK03A will need to be delivered by the applicant via a Section 278 agreement with this authority prior to the use of the site commencing.
- 9.31 It should be noted that KCC Highways do not consider that the pedestrian crossing proposed at Site A is a measure which is necessary in order to make the highway improvements and proposed pedestrian crossings acceptable. KCC Highways are of the view that although these are important in linking the development to the wider footway network the number of actual users would not necessitate more intensive measures that may compromise the availability of on-street parking for local residents.
- 9.32 With regard to parking, the density of development as proposed is low and the layout indicated on the plans shows adequate provision (amounting to approximately a total of 27spaces) within both sites for car parking connected to the development. As such I do not consider it would be likely to increase parking pressure on Breach Lane or displace existing parking.
- 9.33 Policies DM6 and DM7 of the Local Plan seek to ensure that developments do not cause unacceptable highways impacts. Taking the above into account, I do not consider that the scheme would conflict with these policies.

### **Ecology**

- 9.34 Paragraph 174 of the NPPF 2018 advises that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. It also advises that opportunities to incorporate biodiversity in and around developments should be encouraged. The application has been supported by a Preliminary Ecological Appraisal and Reptile Mitigation Strategy which KCC Ecology are satisfied are the appropriate level of ecological survey work has been undertaken. KCC Ecology sought clarification regarding potential reptile receptor sites near/adjacent the proposed development site which the applicant provided and KCC Ecology confirmed the justification for receptor site selection was acceptable.



- 9.35 As such, KCC Ecology raise no objection to the proposed development subject to conditions seeking a detailed reptile mitigation strategy; submissions of an Ecological Design Strategy including ecological enhancements recommended in the Preliminary Ecological Appraisal; and a condition requiring a bat-sensitive lighting strategy.
- 9.36 The previous application was refused due to lack of sufficient information regarding reptiles in terms of identifying a population estimate and location or suitability of an off site receptor site. This information has been provided under this application, and it is considered the previous reason for refusal has been overcome.

### **Drainage**

- 9.37 The application has been supported by a surface water drainage strategy for the sites. KCC Drainage as the Lead Local Flood Authority raise no objection to the principle of development, and queried the half drain times for the 100 year storm event and that the design should be reviewed to reduce the half drain time and requiring additional calculations, and are satisfied this information can be demonstrated as part of a reserved matters application. As such, KCC Drainage raise no objection to the proposed development subject to conditions regarding surface water drainage and a detailed sustainable surface water drainage scheme. Therefore it is considered the proposed development would comply with policy DM21 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraph 165 of the NPPF.

### **Other Matters**

- 9.38 The NHS have requested a S.106 financial contribution of £360 per new resident (£360 x 24 – based on 2.4 persons per unit) to be used for the Maidstone Road Surgery. The consultation response is noted, however the development is for a net gain of 10 residential dwellings and therefore does not meet the threshold for S.106 developer financial contributions which is applicable from 11 or more dwellings.
- 9.39 Policy DM8 of the adopted Local Plan deals with affordable housing and sets out that in 'All other rural areas', which this site would be classified as, there is a requirement (on schemes of 11 dwellings or more) for 40% of the total units to be affordable. As the application is for 10 dwellings it would not meet this threshold and as such there is no requirement for affordable housing.

### **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

- 9.40 This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 9.41 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.

- 9.42 Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 9.43 In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.
- 9.44 The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group (NKEPG).
- 9.45 NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.
- 9.46 In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.
- 9.47 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.
- 9.48 In the event of an approval, agreement would be required for the applicant to pay the SAMMS contribution.

## 10. CONCLUSION

- 10.1 The proposal site is considered to be in an unsustainable location. Whilst a small part of the site is previously development land, the majority of the site comprises undeveloped land. Future occupiers would be largely dependent of the private car to access a wider

range of facilities and to meet everyday needs which is considered to be a significant negative impact. The proposal is considered to have a harmful impact upon the character and appearance of the rural area and countryside. The social and economic benefits of the additional dwellings are considered to be neutral. Therefore it is considered that the development of a largely undeveloped site, harm to the character of the countryside and reliance on the private car would result in unsustainable form of development.

- 10.2 The proposed highway works in terms of road widening and inclusion of two pedestrian crossings have been put forward as enabling development to justify the proposed residential dwellings. The proposed road widening would provide a small scale localised benefit, however it is not considered that this scale of residential development would require such alterations to the existing highway network. KCC Highways have confirmed that if the scheme did not include the proposed highway alterations, that they would not raise an objection to the development, nor would they seek such works as a requirement. Whilst there would be a small localised benefit, this must be weighed up against the significant harm the development would create and it is not considered that this would outweigh the significant harm caused.
- 10.3 When assessed against para 11 of the NPPF, it is considered that the adverse impacts in terms of conflict with the environmental objectives of the Framework significantly and demonstrably outweigh the benefits of the proposal, even when the extent of the housing deficit is considered. Furthermore, it is not considered that the proposed highway works in terms of road widening justify inappropriate and unsustainable development. As such, the proposal is not considered to comprise sustainable development, and the principal of this development it not considered acceptable.
- 10.4 The proposal would not be considered to comply with any special circumstance outlined in paragraph 79 of the NPPF as it would not significantly enhance its immediate setting, nor would it be sensitive the defining characteristics of the local area.

## 11. RECOMMENDATION

REFUSE for the following reason:

### Reasons:

1. The proposed development represents unsustainable development and therefore fails to comply with the requirements of paragraph 8 and 79 of the National Planning Policy Framework 2018. By virtue of its location outside any well-defined urban boundary and remote from the nearest settlements where a good range of services are available, the lack of prospect of residents being able to integrate with the existing communities and the limited public transport to service the site which will result in a car dependent population. Furthermore the proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside and rural context by virtue of its location and likely layout and form. This harm, both significantly and demonstrably, outweighs any benefits from the proposal (including its contribution to the overall supply of housing in the Borough). Development is therefore contrary to policies ST1, ST3, CP3, CP4, DM9, DM14, DM24 of the "Bearing Fruits 2031: The Swale Borough Local Plan (2017)" and would be contrary to paragraphs 8, 11, 79, 127, 130 and 170 of the National

Planning Policy Framework.

**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.



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<b>3.2 REFERENCE NO - 19/502924/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
To allow pavement to be dropped to allow one car to park on drive. (Resubmission of 18/502670/FULL).		
<b>ADDRESS</b> 26 Forbes Road Faversham Kent ME13 8QG		
<b>RECOMMENDATION</b> - Refuse		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Request by Councillor Ben J Martin		
<b>WARD</b> Watling	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Mrs Teresa Pitham
<b>DECISION DUE DATE</b> 13/08/19		<b>PUBLICITY EXPIRY DATE</b> 18/07/19

**Planning History for 26 Forbes Road (current application site)**

18/502670/FULL

To allow pavement to be dropped to allow one car to park on drive.

Refused Decision Date: 26.07.2018

Appeal dismissed Decision Date: 13.12.2018

**Planning History for nearby property at 28 Forbes Road**

SW/13/1149

Lawful Development Certificate for creation of a vehicular access. (Existing)

Refused Decision Date: 25.11.2013

SW/08/0284

Dropped kerb.

Refused Decision Date: 06.05.2008

Appeal dismissed Decision Date: 19.01.2009

**1. DESCRIPTION OF SITE**

- 1.1 Forbes Road is part of the main A251 road which forms one of the main road entrances to Faversham and is a very busy road. No.26 Forbes Road is two storey semi detached dwelling set amongst similar dwellings. It is located opposite the junction with Athelstan Road, very close to the junction with Aldred Road, and close to the pedestrian crossing that exists at that junction. It is also close to the tunnel under the main London to Dover railway line where road levels drop significantly and the carriageway rises steeply on both sides. Single yellow line daytime on-street parking restrictions apply outside the property, prohibiting on-street parking from 8.30am to 6.30pm on Mondays to Saturdays inclusive. These restrictions allow loading and unloading, and they permit parking for up to three hours at a time by a disabled badge holder even within the prohibited hours. The property is one property away from Aldred Road, which is a short

cul-de-sac with on-street parking bays on both sides and only one residential property fronting onto it.

- 1.2 The application property has hardstanding created under Permitted Development (PD) rights to the full width and depth of the frontage (6.5m x 7m). This hardstanding is of recent origin as a June 2017 Google Street View image shows the frontage grassed over with just a narrow garden path along the southern boundary, and with a car parked on the grass. The Council's own aerial photography records confirm this position with the frontage shown grassed over in mid 2015.
- 1.3 The streetscene is characterised by houses with soft landscaped front gardens with low walls or fences, and the only other nearby hard surfaced frontages are at numbers 28 and 30 Forbes Road. Number 28 (see more below) has no dropped kerb but the frontage was entirely hard surfaced (5.8m x 6.8m) on 04 April 2008 under PD rights. At number 30 Forbes Road a dropped kerb has existed for many years (no planning history), although here the frontage was still grassed over in 2008/2009, and the dropped kerb here appears to pre-date the hard surfacing.
- 1.4 Numbers 33 and 34 Forbes Road are further up the road and are set well back from the highway. These properties have driveways serviced by a joint dropped kerb. The one at number 34 was approved in May 2000 after a turning facility was included in the scheme. The vehicle crossover at number 33 was granted planning permission in July 2003 after drawings showing adequate vehicle turning space (a minimum of 8m x 8m) were submitted and approved by Kent Highways.
- 1.5 The planning history of number 28 (see top of report for details) is of particular relevance to the current application. The frontage of this very similar property has been hard surfaced since 2008 under PD rights, but no dropped kerb has been approved. Two cars are regularly parked side by side on the frontage here, meaning that each has to bump up and down the kerb and reverse on or off the frontage. In 2008 the owners of number 28 sought planning permission for a dropped kerb. Kent Highways and Transportation objected and the application was refused. Subsequently an appeal was submitted to the Planning Inspectorate and an appeal decision issued on 19 January 2009. The Inspector decided that the lack of turning space meant that vehicles would be reversing either on or off the highway at this point, which would be potentially dangerous due to the site's position close to the Athelstan Road junction, with the Inspector saying;

*"The appellants may seek to enter and leave the highway at low speeds. However, other road users may be travelling at speeds approaching 30 mph, whilst needing to be alert to traffic movements at the junction and pedestrian activity in the vicinity of the zebra crossing. All these factors mean that movements in and out of the access at No 28 would result in increased hazards for traffic using Forbes Road and pedestrians using the footway.*

*I therefore conclude that the creation of the access would give rise to unacceptable harm to highway safety... Whilst I appreciate the appellants' desire to park close to their home and reduce the pressure on on-street parking in the locality I consider these to be insufficient reasons to set aside the harm that I have identified to highway safety".*



The Inspector dismissed the appeal.

- 1.6 Following that decision the owners of number 28 submitted a Lawful Development Certificate application in 2013 for an existing dropped kerb, claiming several years proven parking on their driveway. However, as the dropped kerb had not in fact ever been made the application was refused. There remains no dropped kerb at number 28.
- 1.7 At number 26 (the current application site) matters have followed a similar path. The frontage was soft landscaped until at least 2017 but it has since been entirely hardsurfaced (6.5m x 7m – enough room for two cars to park side by side) although no dropped kerb has been installed. In 2018 a planning application (18/502670/FULL) to install a dropped kerb was submitted. Kent Highways and Transportation originally raised no objection to the application (subject to certain criteria being met), but when I queried this with them (as they had formally objected to the 2008 application at number 28) they noted the appeal decision at number 28 and made the following comments;

*'My initial assessment was based on the available visibility, apparent precedent for such a form of access along this part of Forbes Road and the crash record. Considering the comments made and ratified on the application for two doors up, however it would appear prudent not to further establish a precedent for access without a turning area, along this route.'*

- 1.8 The application was refused in July 2018 for the following reason;

*(1) The proposed development, by virtue of lack of adequate turning facilities and its location adjacent to a classified highway, would encourage vehicles to either enter or exit the site in such a manner as to cause a hazard to other highway users resulting in unacceptable harm to highway safety and convenience, contrary to policies DM6 and DM14 of the 2017 adopted Local Plan Bearing Fruits 2031*

The refusal was appealed but the appeal was dismissed in December 2018. The full appeal decision letter is attached as an Appendix to this item. Members will note that the decision refers to the previous appeal decision at number 28 and to the presence of a small number of dropped kerbs nearby. However, in my view the key points being made by the latest Inspector's decision are;

1. The main issue in this appeal is the effect of the proposal on highway safety along Forbes Road.
2. I have no reason to question the ability of the Appellant to turn her vehicle within the front garden area to ensure that access and egress from the parking space would be in forward gear.
3. However, the permission if granted, it would endure for future occupiers and would therefore be capable of being used by a wide range of car sizes as well as by more than one car at the same time. It would not be possible and enforceable to restrict the parking to one car only and only of certain dimensions.

4. I am concerned that the accessing or egressing of a car from the appeal property, particularly if reversing in or out, would be a further factor that would contribute to the potential for conflicting movements at this point along Forbes Road.
5. The increased hazards would be unacceptable in highway safety terms.
6. This would conflict with Policies DM6 and DM14 of the adopted Swale Borough Local Plan: Bearing Fruits 2031, as well as the National Planning Policy Framework, all of which, amongst other things, seek safe vehicular access to avoid unacceptable impacts on highway safety.

Despite the appeal decision the property frontage is routinely used for parking, although this involves bumping up and down the kerb.

## 2. PROPOSAL

2.1 The current application is for exactly the same development as refused and dismissed on appeal last year. That is the installation of a dropped kerb across the full 7m width of the property's frontage. However, it is accompanied by additional documentation comprising a lengthy letter from the applicant and a suggested draft Unilateral Undertaking proposing restricting parking on the frontage of the property to only one car of a certain size between the hours of 8.00am and 6.00pm except on Sundays and Bank Holidays when these restrictions would not apply.

2.2 The applicant's letter explains, in summary, that;

- The applicant has been diagnosed with a terminal illness and the application is paramount to her health and well-being
- I have been offered to apply for a blue badge parking space outside my house
- KCC originally supported the previous planning application until they were reminded of the appeal decision at number 28
- Our local MP Cllr Anthony Hook supports the application. *(NB I have not seen or received any such correspondence from Mr Hook)*
- We have recently moved here where we plan to retire and we have two small grandchildren. Our safety concerns are part of the reasons for the application
- We only have one car and wish to park our car on the front of our property so that we do not have to park it on one of the side roads
- The site is very accessible to the railway station and town centre
- There are no visibility restrictions from our drive and we meet the necessary distance from a junction for a dropped kerb
- There is no crash record here since 2017 whilst we have been using our drive
- The appeal decision at number 28 Forbes Road is over 10 years old and each case should be treated on its merits
- There are other dropped kerbs nearby, including new ones on the A2 main road

*(NB The locations of these is not specified and I am not aware of any such approvals)*

- Daytime parking restrictions apply here but in the evening parking is limited and we cannot always park nearby
- At other times parking on the road is allowed, so we cannot see how it would be unsafe for us to use our driveway in forward gear
- A condition restricting parking to only one car within on-street parking restriction hours is suggested, but as an alternative a draft Unilateral Undertaking has been submitted alongside the letter. The applicant considers that a condition to this effect would meet the necessary test for a condition
- A further condition to maintain visibility is also offered and adequate sightlines can be maintained
- The last application was refused for lack of turning space, but the frontage is large enough to turn a car around on and KCC have confirmed that they do not have a minimum standard size necessary to turn a car round
- The property frontage meets KCC minimum standards for parking spaces, visibility and distance from junctions

2.3 The applicant's draft Unilateral Undertaking proposes the following restrictions on use of the property;

- a) The property owner can only use one car on the drive (except between the hours of 6pm to 8am, Sundays and bank holidays, in line with current parking restriction)
- b) The owner is only permitted to park a motor vehicle that is no larger than 2,022 by 4,417 in size
- c) The owner shall procure the above restrictions in any lease agreement or other disposal of the site and include it in all advertising or marketing of the site

2.4 The draft Unilateral Undertaking;

- d) Does not include the mortgagee as a party to the document, as it should
- e) Does not state the units that the size of the motor vehicle is to be measured in
- f) Does not require the owner to enter or leave the site in forward gear,
- g) Does not require the owner to turn within the site
- h) Is not yet signed or dated

2.5 These omissions from the draft agreement could be discussed further with the applicant if necessary, but in view of my recommendation below, and because they essentially seek to secure precisely the sort of restrictions that the December 2018 appeal decision says are unenforceable (see the last sentence of my point 3 in paragraph 1.8 above) I have not sought to put the applicant to the legal costs of having the draft agreement re-written.

- 2.6 Finally, in response to a recent conversation with a relative of the applicant I have received an email accepting the principle of a full Section 106 Agreement binding future occupiers of the property, or a personal planning permission by condition if either was felt to be a way of making the development acceptable.

### **3. PLANNING CONSTRAINTS**

- 3.1 Potential Archaeological Importance

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

- 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies DM6 and DM14.

- 4.2 Policy DM6 clause 2c. states;

*In assessing impacts on the highway network, development proposals will avoid the formation of a new direct access onto the strategic or primary distributor route network where possible, or unless identified by the Local Plan. Other proposals for new access onto the networks will need to demonstrate that they can be created in a location acceptable to the Borough Council and appropriate Highway Authority.*

- 4.3 Policy DM14 clause 10. states;

*All development proposals will, as appropriate achieve safe vehicular access, convenient routes and facilities for pedestrians and cyclists, enhanced public transport facilities and services, together with parking and servicing facilities in accordance with the County Council's standards.*

- 4.4 The NPPF, at paragraphs 108 and 109, states that;

*108. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*

*a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*

*b) safe and suitable access to the site can be achieved for all users; and*

*c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

*109. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

### **5. LOCAL REPRESENTATIONS**

- 5.1 One immediate neighbour to the site has written to object to the application on the basis that the proposal would generate effects on the highway safety, and would generate noise, smells and disturbance, as well as altering the visual appearance of the area.

## **6. CONSULTATIONS**

- 6.1 Faversham Town Council has raised no objection to the application, but has commented that *“the traffic safety concerns raised are justified but the restriction of only allowing one vehicle to park on the drive will alleviate the concerns raised”*.
- 6.2 Kent Highways and Transportation (KHT) have recommended refusal of the application as follows;

*“Thank you for your consultation in relation to the above planning application. I note that this proposes the same arrangement as the previous application that was dismissed at appeal, with the exception of the submitted unilateral undertaking. Having consulted on this matter I am of the view that this document would not prove enforceable or binding on future occupiers of the dwelling. This would again create a condition whereby a driveway with insufficient turning area, would be located immediately on the A251/Forbes Road and in close proximity to its junction with Athelstan Road, both to the detriment of highway safety. I therefore recommend that this application be refused on highway grounds for the following reason:-*

- “The proposals do not provide adequate facilities to enable vehicles to enter and exit the site in a forward gear, to the detriment of highway safety.”*

- 6.3 The County Archaeological Officer has confirmed that no archaeological measures are required in connection with this development.

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 Application papers for application 19/502924/FULL

## **8. APPRAISAL**

- 8.1 As in the previous applications here, the main consideration is the effect of the creation of the proposed access on highway safety.
- 8.2 Forbes Road is a busy A road connecting the A2 with the town centre of Faversham. In the section between The Mall and Station Road it has two sharp bends, several junctions and a zebra crossing. The mouth of the junction with Athelstan Road is opposite no.26 and the junction with Aldred Road is only the width of one semi-detached property away, approximately 7m. The road here has a downward gradient from south to north towards the railway tunnel, and single yellow lines to restrict daytime parking.
- 8.3 Properties along Forbes Road generally have no off-road parking facilities. Those that do are either where the houses are set back further from the highway and there is sufficient room to turn a vehicle around within the site, or where hard standings have

been created under Permitted Development rights. No planning permissions have been granted for dropped kerbs without adequate turning space being available.

- 8.4 Number 26 is one half of a pair of semi-detached dwellings in a group of similar properties along this stretch of road all of which have small front gardens. The paved area in front is 6.5m deep by 7m wide. The Highway Authority considers this to be inadequate to allow vehicles to turn around on the site enabling a vehicle to enter and leave the site in forward gear. I have no reason to disagree with this assessment. The lack of turning space means that vehicles would be likely to reverse either on to the highway, or onto the parking area in front of the house. This would be a hazard to road safety at this busy and confusing point. Even if a vehicle could be turned on the frontage the act of turning into or out from the frontage of the property would involve slowing and turning movements on Forbes Road at a point where other drivers would be concentrating on adjacent junctions, the zebra crossing and the railway bridge. The prospect of vehicles stopping to turn into the property, and the addition of more turning movements at very slow speeds at this point will add to the range of hazards that already exist.
- 8.5 Although there is no minimum turning space size set down in regulations, the application site is not large and there is a real likelihood that vehicles would reverse onto or off the classified road to enter or exit the site. Even if a vehicle could be turned around it will still be entering or leaving the highway at a busy and awkward point. This would result in a danger to highway safety and convenience, especially due to the existence of the junction opposite. The position now is the same as with the appeal decision at number 28 and highway circumstances have not changed in the interim. I am guided by the two consistent appeal decisions and see no reason to depart from them.
- 8.6 The current application seeks to explore the possibility of restrictions being imposed on the current owner of the property, or future owners, during times when on-street parking outside is restricted. These measures include either a planning condition, a personal condition, or a planning obligation either in Unilateral or full Section 106 Agreement form. The restrictions suggested relate to only one car of a certain maximum size being allowed to park on the frontage when on-street parking restrictions apply.
- 8.7 These suggested restrictions are essentially exactly the same as those already considered and ruled out by the Planning Inspector as recently as December 2018 at this very property. Members will note for the attached appeal decision at the end of paragraph 4 where the Inspector says *"it would not be possible and enforceable to restrict the parking to one car only and only of certain dimensions"*. Members will also be aware that for any planning condition to be acceptable it must meet certain basic tests including being "reasonable" and "enforceable". I share the view of the Planning Inspector that such conditions would not be enforceable.
- 8.8 Furthermore, if the Council were to accept such a peculiar set of conditions on this individual property I can foresee this leading to significant pressure for other similar installations, not just near to this site but in all sorts of dangerous locations. None will have the same circumstances and it is also likely that there will be pressure to allow two cars on some properties, such as number 28 Forbes Road. Such development would

not only have adverse consequences for highway safety, but would encourage the paving over of front gardens resulting in loss of greenery and biodiversity in streetscenes on main roads.

- 8.9 A draft Unilateral Undertaking has been submitted with the same proposed restrictions. I do not consider that these overcome the basic highway safety objection, and the same questions of reasonableness and enforceability apply. Notwithstanding the current inadequacies in the draft Undertaking I do not consider that any such Undertaking can be sufficiently robust and acceptable to overcome the highway safety objection so clearly set out on the two relevant appeal decision at this section of Forbes Road.
- 8.10 Finally, the applicant's personal circumstances are raised. I can appreciate that these will be uppermost in her mind, but the implications of making matters easier for her are a reduction in road safety for everyone else. I have already stated that the current on-site parking restrictions provide for a three hour window for a disabled badge holder to park outside the property. I gather from our own parking team that a disabled parking bay would not normally be allowed in such a location, but Aldred Road is just one door away and a dedicated disabled bay might be approved there. Accordingly, there is no reason to suppose that the applicant will not be able to park close to the property both during the day and at all times that the on-street restrictions do not apply – that is after 6.00pm, and before 8.30am, and on Sundays. The applicant has raised the question of a personal permission. Such a permission is extremely rarely justified for permanent physical works which will inevitably outlast the user, and in this case I do not see why this would be justified, or how it would overcome the highway safety issue. Accordingly, I do not see a personal permission as a reasonable option here.

## **9. CONCLUSION**

- 9.1 This proposal is precisely the same as one dismissed at appeal less than one year ago. The applicant has made every effort to explore ways around the problems that the latest Planning Inspector anticipated. However, the threat to highway safety remains the same and the safeguards suggested were already considered and ruled out by the Planning Inspector. I do not consider that the Council has any reasonable grounds to disagree with the latest appeal decision which supports our previous refusal and that to do so is likely to result in significant problems both here and elsewhere. I recommend that the application be refused.

**RECOMMENDATION** - REFUSE for the following reason:

### **REASON**

- (1) The proposed creation of a new access point at a busy and complicated part of a classified highway, would encourage vehicles to either enter or exit the site in such a manner as to cause a hazard to other highway users resulting in unacceptable harm to highway safety and convenience, contrary to policies DM6 and DM14 of the 2017 adopted Local Plan Bearing Fruits 2031

## **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.





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## APPENDIX 1



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## Appeal Decision

Site visit made on 11 December 2018

**by Lynne Evans BA MA MRTPI MRICS**

an Inspector appointed by the Secretary of State

Decision date: 13 December 2018

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**Appeal Ref: APP/V2255/D/18/3210976**

**26 Forbes Road, Faversham, Kent ME13 8QG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Teresa Pitham against the decision of Swale Borough Council.
  - The application Ref: 18/502670/FULL dated 5 June 2018, was refused by notice dated 26 July 2018.
  - The development proposed is to allow pavement to be dropped to allow one car to park on drive.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue in this appeal is the effect of the proposal on highway safety along Forbes Road.

### Reasons

3. The appeal property is a semi-detached property in a predominantly residential area. Forbes Road, a classified road, is a busy road which leads towards the town centre of Faversham. The site lies opposite the junction of Forbes Road with Athelstan Road and close to the junction of Forbes Road with Aldred Road, with a pedestrian crossing just beyond, to the north. Daytime on-street parking restrictions apply along the road. The front garden area is already hard paved, and the proposal is for a dropped kerb to allow a car to be parked in the front garden area.
4. I have no reason to question the ability of the Appellant to turn her vehicle within the front garden area to ensure that access and egress from the parking space would be in forward gear, although I understand the front garden area to be less than the dimensions considered necessary by the Highway Authority to enable such manoeuvres to be undertaken clear of the highway. However, the permission if granted, would endure for future occupiers and would therefore be capable of being used by a wide range of car sizes as well as by more than one car at the same time. It would not be possible and enforceable to restrict the parking to one car only and only of certain dimensions.
5. Given the busy nature of the road, and the proximity of junctions of side roads to the appeal property, as well as the pedestrian crossing, I am concerned that

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

**APPENDIX 1**

Appeal Decision APP/V2255/D/18/3210976

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the accessing or egressing of a car from the appeal property, particularly if reversing in or out, would be a further factor that would contribute to the potential for conflicting movements at this point along Forbes Road. I have taken into account the visibility in both directions, but I agree with the Council that the proposal would lead to increased hazards for other highway users already driving along or seeking to join Forbes Road from one of the side roads, and pedestrians using the footway or pedestrian crossing. The increased hazards would be unacceptable in highway safety terms.

6. I therefore conclude that the proposal would be a hazard to highway safety along this part of Forbes Road. This would conflict with Policies DM6 and DM14 of the adopted Swale Borough Local Plan: Bearing Fruits 2031, as well as the National Planning Policy Framework, all of which, amongst other things, seek safe vehicular access to avoid unacceptable impacts on highway safety.
7. I have sympathy with the family related reasons for seeking the off-street parking space, but they do not outweigh the harm I have concluded to highway safety. I also understand the concern that the Highway Authority appear to have changed its views on the proposal, but my assessment is on the planning merits of the proposal on the basis of all the information before me as well as my site visit.
8. I have been made aware of and have taken into account other off-street parking in the vicinity, as well as an appeal decision refusing permission for a dropped kerb at No 28 Forbes Road (APP/V2255/A/08/2081067). Each proposal must be judged on its individual merits and the presence of a small number of other examples of dropped kerbs does not persuade me that permission should be granted, given the harm I have concluded from the proposal before me.
9. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

*L J Evans*

INSPECTOR

<b>3.3 REFERENCE NO - 19/502540/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Demolition of 3no. existing outbuildings. Conversion of outbuilding together with single storey extensions to create 1no. dwelling and a detached garage/store.		
<b>ADDRESS</b> Bramble Hall Farm Bushey Close Boughton Under Blean Faversham Kent ME13 9AE		
<b>RECOMMENDATION</b> Refuse		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Parish Council supports the application.		
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Boughton Under Blean	<b>APPLICANT</b> Mrs M Berry <b>AGENT</b> Jonathan Gale Architects LTD
<b>DECISION DUE DATE</b> 01/08/19		<b>PUBLICITY EXPIRY DATE</b> 12/07/19

## 1. DESCRIPTION OF SITE

- 1.1 This application site includes four small poor quality agricultural buildings, measures approx. 0.13 hectares, and is set in an isolated rural lane which is in fact a cul-de-sac known as Bushey Close. Bushey Close is a quiet, narrow country lane which is accessed off Brickfield Lane, a lane designated as a protected rural lane in the Council's adopted Local Plan. A public footpath runs along the western boundary of the site, which lies around 350m south-west of the village of Boughton and 180m south-west of the A2 Trunk Road. Immediately to the south of the site is Bramble Hall, a Grade II listed dwelling house which sits on higher ground.
- 1.2 The application site is approx. 5km by road to Faversham town centre and train station and 1km to the village of Boughton-Under-Blean. Access to most local facilities requires a car journey. The location is outside any settlement and in the countryside.
- 1.3 The disused farm buildings, which are not curtilage listed, consist of hoppers huts, an open fronted hay store, a double garage block and a steel framed building, with a single roundel base at the entrance to the site. The buildings are in a poor condition and are overgrown with ivy and dense vegetation.
- 1.4 Bramble Hall is occupied by a relation of the applicant but is not involved in the farm business. The adjacent fields accommodate seasonal workers' caravan accommodation, which is occupied during the hop, fruit and grape harvests each year.

## 2. PROPOSAL

- 2.1 The proposal is for removal of three of the four existing buildings and the erection of a new dwelling, which will be single storey with three bedrooms (each with an en-suite) and associated living space. This would involve the demolition of two of the buildings and conversion/extension of one. The fourth building which stands on the opposite side of a private access will be demolished and replaced with a detached garage/store.

- 2.2 The four existing buildings are numbered A, B, C and D on the submitted drawings. Building A consists of corrugated tin walls and a lean-to roof. Building B is set at right angles to building A and is a brick built double garage with an asymmetrically-pitched corrugated tin roof. Building C is constructed of corrugated tin walls and roof formed of two sections, with a pitched roof to one part and a lean-to attachment which drops down in height. Building D is separated from the other three buildings and is constructed of a steel frame, clad in corrugated tin sheeting to the walls and pitched roof.
- 2.3 The new dwelling would be formed of three main rectangular blocks joined by means of linking structures around a courtyard area, similar to the extant configuration but of a larger scale than the present buildings. The proposed U-shape building would remain symbolically as three main buildings but they would no longer be physically separate from one another since they would be connected with link buildings. The proposed exterior treatment is tile roofing over brick and weather boarded elevations with contemporary style fenestration.
- 2.4 The application is supported by a number of reports including the following:
- Design and Access Statement
  - Heritage Statement
  - Agricultural Appraisal
  - Bat and Owl Roost Appraisal
- 2.5 From the above listed reports, I draw the following summarised key points:
- 2.6 Design and Access Statement
- The siting of the proposed house continues the farming association with the yard
  - The proposed house forms the same shape and virtually the same size as the existing collection of buildings
  - The materials chosen are all traditional – clay peg tiles and weatherboard
  - The buildings have not been used for agriculture for many years yet the story is still there to see
  - The gross area is under 200sqm
  - The property will be to modern standards and will be built to be energy efficient, incorporating an air source heat pump
  - The site is closely connected to Boughton-Under-Blean by footpath, approx. half a km between the proposed house and the High Street
- 2.7 Heritage Statement
- The setting of the heritage asset, although remaining rural, has already been affected by the post-1940s ancillary buildings as well as the construction of the nearby A2

- Given the footprint of the proposed development is not dissimilar to the existing buildings, and that it will utilise what it can of their brickwork, while not exceeding the current buildings in height, it can be argued that the development would not significantly alter the setting

## 2.8 Agricultural Appraisal

- The existing buildings cannot accommodate or provide safe storage of modern farm machinery
- The two older tin clad buildings provide no functionality in farming terms and there is no relationship between these buildings and the garage to serve any useful farming purpose
- The original designation of these buildings for seasonal worker accommodation would have been appropriate at the time but current requirements are more efficiently and easily met by provision of accommodation in caravans and/or mobile homes.
- The proposal will enhance a cluster without intrusion on landscape or local amenity.
- The applicants, Mr and Mrs Berry currently live in the farmhouse based at Brenley Farm, Boughton, comprising of an agricultural holding of approx. 228 acres which is let to them by the Duchy of Cornwall. Their son has now taken over as Managing Director of the farm business and terms have been agreed whereby he can be added to the tenancy as a successor, enabling him and his family to move into the farmhouse without breaching the tenancy agreement. This means that Mr and Mrs Berry need to establish alternative accommodation.

## 2.9 Bat and Owl Roost Appraisal

- There is no evidence of owl or bat occupation in any of the buildings
- The only building that has minor potential for bat occupation is the double garage and therefore would warrant a controlled demolition under the supervision of the Project Ecologist

2.10 The applicant sought pre-application advice prior to submitting the application and was advised that the erection of a new dwelling here was unlikely to be supported as the site was not a suitable location for housing. The possible fall-back position of converting the agricultural buildings into residential dwellings was also found unlikely to be lawful as only the brick built agricultural building would be capable of functioning as a dwelling house and the other two would need to be entirely rebuilt. This position has not yet been tested or established by application.

## 3. **PLANNING CONSTRAINTS**

### 3.1 Adjacent to listed building

Outside established Built-up-Area Boundary

## 4. **POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF): Paragraphs 8, 11, 12, 78, 79, 83 and 196
- 4.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (Delivering sustainable development in Swale), ST3 (The Swale Settlement Strategy), ST7 (The Faversham area and Kent Downs Strategy), CP3 (Delivering a wide choice of high quality homes), CP4 (Requiring good design), DM3 (The rural economy), DM7 (Vehicle Parking), Policy DM14 (General Development Criteria), DM26 (Rural Lanes), DM32 (Development involving Listed Buildings)
- 4.3 Supplementary Planning Guidance (SPG): The Conservation of Traditional Farm Buildings
- 4.4 In my view the key policies here are ST1 and ST3, although others are of relevance. Policy ST1 seeks sustainable development which accords with the Plan's settlement strategy. This is set out in policy ST3 (see below) and this is a location where a new build house would not normally be approved unless related to a functional rural need as provided for by policy DM12. That case is not advanced here, but the application focusses on redevelopment of this site due to no meaningful agricultural use of the four buildings.
- 4.5 Previously Developed (or brownfield) Land is defined by the NPPF as;

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

In this case, as the buildings are of agricultural origin and last used as such, the site does not meet the NPPF definition of previously developed (or brownfield) land. The site should therefore be considered to be a greenfield one in a rural location where an isolated new dwelling should not be permitted.

- 4.6 The NPPF at paragraph 79 advises against isolated new dwellings in the countryside other than in exceptional circumstances, none of which apply here. Nor is the development likely to support services in adjacent villages as suggested by paragraph 78 of the NPPF as there are very few such facilities and most need will be met at Canterbury or Faversham.
- 4.7 The site is also accessed via a lane designated in the Local Plan as a rural lane, where policy DM26 seeks to safeguard against development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes. In this case I believe that an additional dwelling here will detract from the generally undeveloped nature of the lane in question, to its detriment.



- 4.8 Finally, at paragraph 196 of the NPPF the advice is that where development will lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use. In this case I can see no any public benefit to offset any harm arising to the rural agricultural setting of the listed building by the replacement of typical small farm buildings with a new dwellinghouse.

## **5. LOCAL REPRESENTATIONS**

- 5.1 None

## **6. CONSULTATIONS**

- 6.1 Boughton-Under-Blean Parish Council supports the application. When I asked them to clarify the reasons for this support they responded as follows:

*“We do not have any reasons to not support.*

*It is on an isolated site with the only other property owned by the applicant.”*

- 6.2 Historic England did not consider it necessary for them to be notified and do not comment.
- 6.3 Natural England raises no objection to the application subject to strategic mitigation (SAMMS payment) in respect of possible increased recreational disturbance to The Swale SPA/Ramsar site.
- 6.4 Kent Highways and Transportation considers this to be a non-protocol matter.
- 6.5 The Council's Economy and Community Services Manager supports the application on the basis that the applicant is a well established provider of tourist accommodation. However, the agent has clarified that this application does not propose holiday accommodation, although there may be a few residual B&B customers who have frequented Brenley Farm for many years and to which the applicant has developed good relations with.
- 6.6 The Council's Environmental Health Manager has raised no objection subject to conditions relating to possible land contamination and construction hours.

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 Application papers and drawings referring to application reference 19/502540/FULL

## **8. APPRAISAL**

The key issues to consider in this case are the principle of development of a new dwelling on this isolated rural site, and the effect on the setting of the adjacent Grade II listed dwellinghouse.

### **Principle of Development**

- 8.1 Firstly, I note that the site is situated some distance outside any established built-up area boundary in an isolated location with poor accessibility to local services, so rural settlement policies are applicable in this case. The site is not allocated for housing; there are no nearby housing allocations. The Council is in the fortunate position of

having a fairly new Local Plan (July 2017) which considered such matters in some depth. Recent government publication of housing delivery tests indicate that the Council has a very slight shortfall in housing delivery, but as noted, that shortfall is very slight. The Swale settlement strategy is set out in Policy ST3 of the Local Plan. Policy ST3 clearly states that;

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

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

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

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

I consider that the proposal fails to meet these criteria and that it is similar to a number of cases in the Borough (including sites with existing buildings on) where development has been refused and dismissed at appeal in recent years referring to the unsustainable location outside any established built-up area boundary.

8.3 I consider that the appeal decision (APP/V2255/W/17/3183462) for demolition of disused farm buildings and erection of nine residential dwellings at Milstead Manor Farm, Manor Road, Milstead includes comments particularly relevant to this application. The Inspector noted;

*'In this instance the appeal site is within the open countryside but is developed, containing buildings which are primarily agricultural in nature. I have noted the comments made by the appellant and third parties, regarding the condition and appearance of the buildings on the site. Nevertheless, while some of the buildings are in need of repair, they do not have a significant height or mass and are set back from the road.'*

The Inspector further noted that;

*I am not persuaded therefore, that even if I accepted that the removal of the existing buildings on the site would be of benefit, that their replacement with those proposed would not cause material harm to the rural character and appearance of the area..'*

- 8.4 In a similar vein, an appeal for three new dwellings at 1 Boughton Field Cottages, Canterbury Road, Faversham (closer to Faversham than the current application site under planning reference 18/502770/FULL was dismissed due to the site's unsustainable location. The Inspector stating that;

*'Development of the site would be contrary to the settlement strategy of the local plan. Occupiers of the development would have poor access to services and facilities. Redevelopment of the site would materially harm the character and appearance of the open countryside. Accordingly, the proposal would conflict with Policies ST3 and CP3 of the local plan, amongst other things, seek to steer new development to within settlements of appropriate scale and restrict development in the open countryside.'*

- 8.5 A very recent (June 2019) appeal decision for dwellings in the countryside situated to the rear of a dwelling is also relevant; appeal reference APP/V2255/W/18/3218833 as reported to Members at the July 2019 meeting (item 5.1). This proposal was at The Old Woodyard, Upchurch, where replacement of an existing building with new dwellings was refused and then dismissed at appeal. This is of relevance as that site was previously developed land, unlike the existing application site, but was still refused with the Inspector commenting at paragraph 8;

*"The appeal proposal would result in an increase in built form on the site, and the formation of residential curtilages. The proposed dwellings would be noticeably taller and bulkier than the existing outbuilding and would spread development onto the open rear part of the site. As a result, the site would have a more developed and urbanised appearance, which would result in piecemeal erosion by built form of the countryside gap, and would fail to safeguard the open character of the countryside. It would thereby contribute to the erosion of the separate identities and character of the settlements. Whilst I accept that the site is clearly defined and contained and has been in use as a woodyard, the proposal would nonetheless result in a more intensively developed site with a greater quantum of built form. Whilst the site benefits from some screening on the boundaries, the proposed development would be apparent in glimpsed views from the surrounding area and Otterham Quay Lane. I therefore find that it would be harmful to the character and appearance of the area..."*

- 8.6 This year, there have been a number of appeals which have been dismissed for new dwellings in the countryside. This includes an appeal for the change of use of a pool building to a detached bungalow at Greenhurst, Tunstall; appeal reference APP/V2255/W/18/3205706 as reported to Members at the March 2019 meeting (item 5.2). The Inspector concluded at paragraph 16;

*"The significant harm resulting from poor accessibility to services and moderate harm to the character and appearance of the countryside would outweigh the more limited benefits of this proposal."*

Another appeal decision (APP/V2255/W/18/3217204) which shows strong support for the new Local Plan's settlement strategy is at 64 School Lane, Lower Halstow as reported to Members at the June 2019 meeting (item 5.2).

### **Impact on visual amenity and setting of listed building**

- 8.7 The proposed dwellinghouse formed of three main rectangular blocks conjoined by means of linking structures around a courtyard area would undoubtedly seek to re-create the current arrangement of separate buildings, but the enlargement of floorspace and increase in overall height of the proposed dwellinghouse will have a greater impact on the setting of the listed building than the current simple agricultural buildings do. Although the extant buildings are in poor condition, their rustic nature, small scale and instantly recognisable simple agricultural forms do far less harm to the setting of a former farmhouse than the scale and rather complicated form of the proposed new dwelling would.
- 8.8 I note that the current submission contends that the proposed dwelling will be visually more acceptable than the current 'decrepit and mismatched' buildings and as such will protect the landscape setting and enhance the setting of the listed building. Although the ancillary outbuildings are not curtilage listed and not of any obvious merit, they are very much subordinate to the setting of the listed building. They do not intrude excessively on the setting because they are fairly small in scale and have a simple agricultural character which blends into the surroundings, rather than striking a discordant appearance within a rural setting which can happen with the imposition of new buildings. They are also surrounded by greenery and are separate and distinct from one another as well as being 'weathered' both physically to the extent that they do not give rise to significant harm to the wider countryside, nor are the buildings of a kind that one would not expect to find in such a location.
- 8.9 Although the site is reasonably close to the 'Boughton Street conservation area', it is not located within it and is not within the setting of the conservation area largely due to the intervening A2 Trunk Road and the topography, which means that there are no views from the conservation area either to or from the site.
- 8.10 Views from the road and the public footpath to the west of the site allow the listed house to be clearly seen. There are some restrictions on views from directly north of the application site but it remains possible to appreciate the upper storeys of the listed building. Consideration of the setting of listed buildings should be given due weight since, apart from the benefits and virtues of maintaining views and protecting the setting of historic buildings, both for tangible and intangible heritage related factors, this matter is also underwritten by the law and is therefore a material consideration. I believe that although due weight in regards to the setting has been considered by the applicants, that the proposed residence would be detrimental to the setting of the listed building and would cause more harm to its setting than that caused by the existing group of buildings, which would therefore cause harm to the designated heritage asset since it would result in a further loss of significance.
- 8.11 I am of the opinion that the proposal, if approved, would have an adverse impact upon the setting of the Grade II listed dwelling. The proposal is too large in scale, and not in keeping with the setting. The proposed dwelling and garage would be too obtrusive in

the vicinity and would therefore be detrimental to the setting of listed building as well as the wider setting.

**APPROPRIATE ASSESSMENT UNDER THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017**

- 8.12 This Appropriate Assessment (AA) has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 8.13 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.
- 8.14 Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 8.15 In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.
- 8.16 The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group
- 8.17 Since this application will result in a net increase in residential accommodation, impacts to the SPA and Ramsar sites may result from increased recreational disturbance. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £245.56 per dwelling. Given that I am not recommending approval of the application, I consider it would serve no material planning purpose to request the applicant agrees to make this mitigation payment, but it remains a matter that should be dealt with if an appeal is lodged against refusal.

## 9. CONCLUSION

- 9.1 I am firmly of the opinion that the proposal would be harmful to the appearance and tranquillity of the countryside in general, and to the immediate locality in particular, being situated adjacent to a listed building and close to a designated rural lane. Furthermore, the site is located in a remote, unsustainable location, on land some considerable distance outside any established built-up area boundary which is also not allocated for housing.
- 9.2 I consider that the proposal is contrary to both local and national policies for isolated new dwellings in the countryside, and I recommend that planning permission is refused.

## 10. RECOMMENDATION

**REFUSE** for the following reasons:

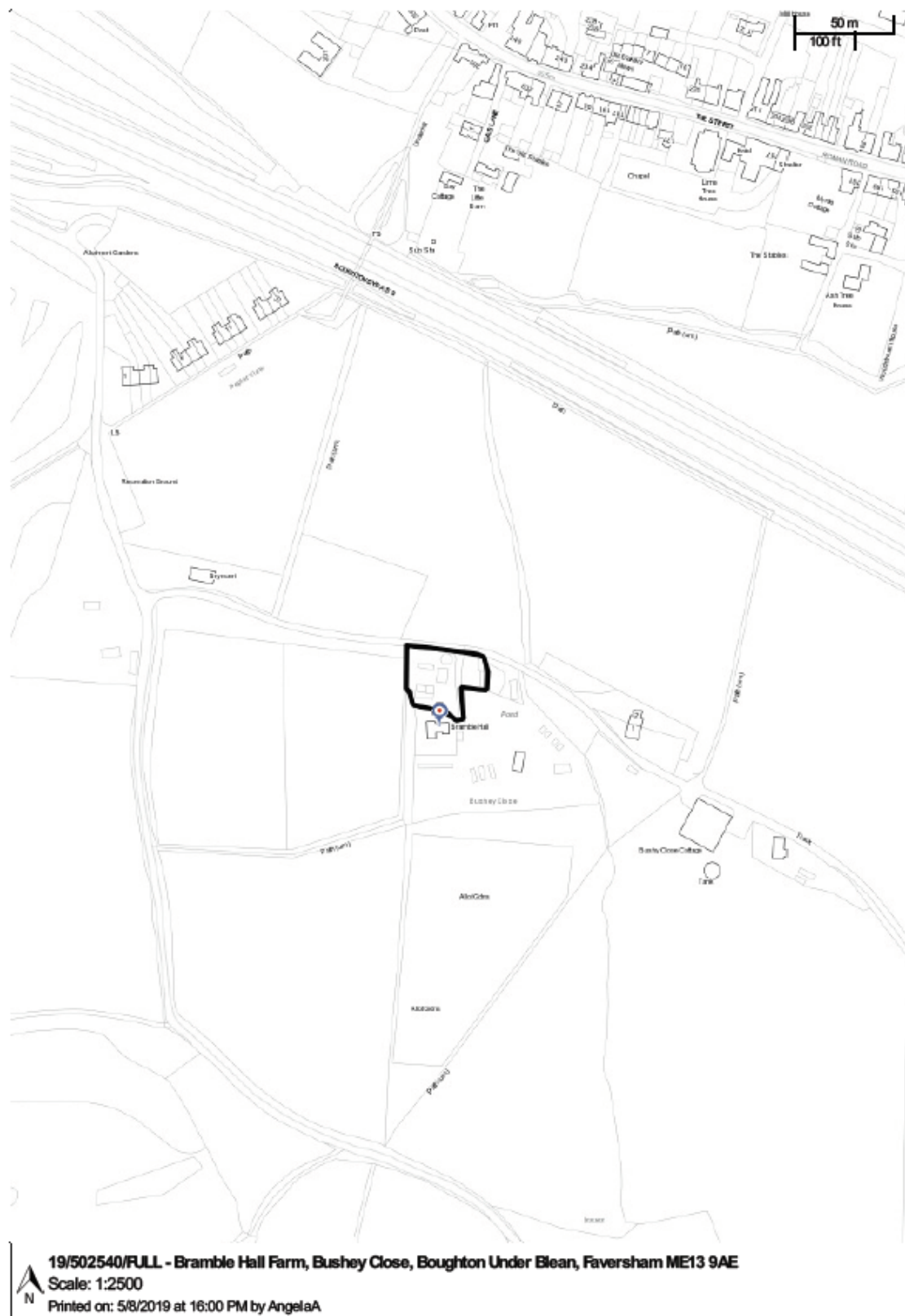
- (1) The proposed dwelling, being situated in an isolated unsustainable location at a considerable distance outside any established built-up area boundary, would represent unsustainable and undesirable consolidation of sporadic development contrary to the approved Swale settlement strategy, harmful to the character of the local landscape, to the character of the rural lane and detrimental to the character of the countryside as a whole, contrary to policies ST1, ST3, ST7, DM14, DM26 and DM32 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and Paragraphs 8, 11, 12, 79, 83 and 196 of the National Planning Policy Framework.
- (2) The Local Planning Authority has a statutory obligation under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and the proposed development would have a significantly adverse effect on the tranquil rural setting of the Grade II listed dwelling by introducing a more prominent and intrusive form of development. As such, the proposal is contrary to policy DM32 of Bearing Fruits 2031: The Swale Borough Local Plan 2017, and paragraphs 196 of the National Planning Policy Framework.

### **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.



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**PLANNING COMMITTEE – 15 AUGUST 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 – Land At Crown Quay Lane, Sittingbourne**

**APPEAL DISMISSED**

**ENFORCEMENT APPAL**

**Observations**

Full support for the Council's decision to serve an enforcement notice on this harmful development close to Sittingbourne Creek.

- **Item 5.2 – Newington Working Men's Club, Newington**

**APPEAL ALLOWED**

**DELEGATED REFUSAL**

Whilst the Inspector has allowed the appeal. Members will note however that of the two conditions that were at issue (conditions (2) and (11) of 17/504342/FULL) the Inspector concluded, at paragraph 48, that condition (2)(noise mitigation) should not be varied and that condition (11)(non-openable windows on front façade and mechanical ventilation from rear) should not be removed because of noise impacts arising from traffic on the A2, and should simply be varied to require that all windows on the front façade are non-opening only.

- **Item 5.3 – Greenacres Farm, Norton Road, Norton**

**APPEAL DISMISSED**

**DELEGATED REFUSAL**

**Observations**

A complex case revolving around the same information and other appeal decisions that officers had considered, with the Inspector supporting that analysis and decision.

- **Item 5.4 – Black Cottages, Mutton Lane, Ospringe**

**APPEAL DISMISSED**

**DELEGATED REFUSAL**

**Observations**

This decision only rejects the development on technical grounds and leaves the door open for a re-submission which the Council will find hard to resist. Approval appears to be based on the Council's current lack of secure five year housing land supply and to this extent the decision is inconsistent with several other recent appeal decisions where this lack of land supply has not been found to be a significant factor when only single or small numbers of houses have been proposed.



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## Appeal Decision

Site visit made on 11 June 2019

by **Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 July 2019

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**Appeal Ref: APP/V2255/C/18/3205839**

**Land at Crown Quay, Crown Quay Lane, Sittingbourne, Kent ME10 3ST**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Lajos Tivosi against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 30 May 2018.
- The breach of planning control as alleged in the notice is: (1) Without planning permission, the change of use of the land for the siting of static caravans, touring caravans, a mobile portacabin, trailer shower block, toilet block and laundry room on the land, used for purposes of an encampment providing refreshments, washing facilities, and sleeping accommodation on the land. (2) Without planning permission, the commercial parking of heavy goods vehicles (HGV), motor vehicles and trailers constituting a lorry and car park on the land.
- The requirements of the notice are: (i) Cease the use of the land for the siting of static caravans, touring caravans, a mobile portacabin, trailer shower block, toilet block, laundry room and any other portable buildings associated with the unauthorised encampment; (ii) Remove all caravans, mobile homes, portacabin (sic) and portable buildings set out in (i) above from the land; (iii) Cease the use of the land for the parking of heavy goods vehicles, motor vehicles and trailers; (iv) Remove all heavy goods vehicles, motor vehicles and trailers from the land.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

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### Preliminary Matters

1. The enforcement notice alleges a material change of use of the appeal site to a mixed use, including use as an encampment providing refreshments, washing facilities and sleeping accommodation. Step (i) of the notice requires the use for the siting of static caravans, touring caravans, a mobile portacabin, trailer shower block, toilet block, laundry room and any other portable buildings associated with the unauthorised encampment, to cease. Although ceasing the use as an encampment is not explicitly referred to, for practical purposes compliance with step (i) would achieve the same end. Moreover, step (ii) requires the removal of all caravans, mobile homes, the portacabin and portable buildings in step (i) from the site. The appellant could have been in no doubt that the effect of the notice is to require the encampment use to cease. Consequently, no injustice would be caused if the notice were to be corrected to insert a step specifically requiring that use to cease, in the interests of certainty.

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Appeal Decision APP/V2255/C/18/3205839

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2. During my visit, I observed that the far eastern corner of the site appeared to be vacant and had been fenced off from the rest of the site. However, the appellant accepted that the mixed use alleged in the notice had also occurred on that part of the site. Its deletion from the land affected by the notice would mean that a re-occurrence of the mixed use on that part of the site could not be enforced against other than by issuing a further enforcement notice. This would cause the Council injustice. Therefore, I do not intend to vary the notice in this respect.

#### **Ground (a) appeal**

##### **Main Issues**

3. The Council confirmed that reason 3 for issuing the notice was not being defended. Therefore, the main issues in this ground of appeal are:
- The effect of the development on the risk of flooding and groundwater pollution.
  - The effect on biodiversity.

##### **Reasons**

4. The site is a large and mostly hardsurfaced area of land, formerly occupied by industrial buildings. The mixed use in the notice provides a facility for the rest and refreshment of HGV drivers travelling to and from international locations. Washing, toilet, catering and rest facilities are provided in a partly fenced compound area. There is a portacabin and attached static caravan both used as a café, a trailer containing shower facilities, a building providing toilet and laundry facilities, some static caravans used as accommodation and touring caravans used for storage, in this area. For the most part, the remainder of the site is used for parking HGVs. I am given to understand that in excess of sixty HGVs can be parked overnight at the site on occasions.
5. A tidal river known as Milton Creek runs adjacent to the northern boundary of the site. Although some active industrial uses remain nearby, the site forms part of a larger area consisting of mostly vacant industrial land which is allocated for a development consisting of a minimum of 650 dwellings, open space and habitat creation in Policy A9 of the Swale Borough Local Plan (LP). I am given to understand that the site is intended to be developed as open space in the LP allocation. Parts of the LP allocation to the south of the site are in the process of being developed.

##### *Flood risk & pollution*

6. The approach to managing flood risk set out in section 14 of the National Planning Policy Framework (the Framework) is to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.
7. The Council referred to the site as being within Flood Zone 3a and it is therefore at a high risk of flooding. It is likely that HGV drivers visiting the site in conjunction with the use and wishing to sleep there would mostly do so in their vehicles. I also understand that the appellant, his partner and some staff sleep in the static caravans. Therefore, the flood vulnerability of the use is

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

2

Appeal Decision APP/V2255/C/18/3205839

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incompatible with Flood Zone 3 and should not be permitted, according to Tables 2 and 3 of the Planning Practice Guidance (PPG) 'Flood risk and coastal change'. The Environment Agency (EA) objection to a 2014 planning application (subsequently refused) for a similar use of the site<sup>1</sup> on grounds of the flood risk associated with sleeping in vehicles, reinforces my findings.

8. Moreover, development in Flood Zone 3a involving change of use to a caravan or camping site requires a site-specific flood risk assessment (FRA) which deals with the sequential and exception tests set out in the Framework at section 14. The absence of an FRA in respect of the use means that in any event, it is not possible to determine whether the sequential test and, if required, the exception test have been satisfied and whether flood risk will be increased elsewhere. Nearby development taking place as part of the LP allocation is likely to have been included in a Strategic FRA which supported preparation of the LP and/or subject to a site-specific FRA.
9. The Council indicated that the risks of groundwater pollution from the use could be addressed by imposing conditions. This was also the view of the EA in the 2014 application. Suitable conditions were suggested in the Council's statement. Consequently, there is no firm evidence to indicate that there is an unacceptable pollution risk due to the use.
10. Nevertheless, for the above reasons the use is unacceptable on flood risk grounds. Therefore, the use does not accord with criterion in LP Policy DM14, as it does not respond to the constraints and opportunities posed from climate change and natural processes. Also, the use does not accord with LP Policy DM21 as it represents inappropriate development in an area at risk of flooding. Furthermore, the use is inconsistent with the approach to managing flood risk set out in section 14 of the Framework.

#### *Biodiversity*

11. The use has resulted in human and vehicular activity at the site and associated disturbance including noise and lighting, in proximity to Milton Creek. I am given to understand that the creek is designated as a local wildlife site. No wildlife survey has been carried out to assess the effects of the use on protected species on or near the site and on the wildlife interest of the creek. Consequently, I cannot be assured that the use has not had an adverse impact on biodiversity. It follows that the use does not accord with criterion in LP DM14, as the natural environment has not been conserved. Also, the use does not accord with LP Policy DM28, as it has not been shown that any adverse impacts on biodiversity have been minimised.

#### *Other matters*

12. According to the appellant, the site has a long history of continuous use for commercial and industrial purposes including parking HGVs. However, the appellant accepted that planning permission was required for the use. There was no appeal on ground (d)-that it was too late to take enforcement action. In any event, relevant case law makes it clear that where as in this instance, there is a material change from one mixed use to another, the result is a different mixed use. Where individual components of the mixed use have subsisted for more than ten years prior to the issue of an enforcement notice,

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<sup>1</sup> Council Ref: SW/14/0353.



Appeal Decision APP/V2255/C/18/3205839

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they nevertheless cannot be treated as separate and unaffected by the new use<sup>2</sup>. Therefore, a previous use of the site for HGV parking cannot be decoupled from the totality of the unauthorised mixed use. Accordingly, past uses of the site do not represent a realistic fallback position and carry limited weight in favour of permitting the use to continue.

13. The PPG 'Use of planning conditions' suggests that granting a temporary planning permission might be appropriate where it enables use of otherwise vacant land for a temporary period, pending longer term regeneration plans coming forward. There is no firm evidence to suggest that granting a temporary permission for a period of 3-4 years would prejudice redevelopment of the site in accordance with LP Policy A9. However, the material considerations to which regard must be had in granting planning permission are not limited or made different by a decision to make the permission temporary. Consequently, a temporary permission would not overcome the planning harm identified above. For similar reasons, a completed Planning Obligation requiring the appellant to vacate the site when it is required for redevelopment would have been afforded limited weight.
14. I am given to understand that neither the Council or Kent County Council have made provision for HGV driver rest facilities in the area. However, no firm evidence was supplied concerning any identified shortfall in such facilities in the immediate and wider surrounding areas, or the extent of any problems associated with a proliferation of roadside HGV parking. According to the Council, some of the problems associated with roadside HGV parking in the vicinity can be attributed to the use of this site. Consequently, I can only give limited weight to any benefits arising from the use in respect of it addressing a shortage in HGV driver facilities.
15. According to the appellant, the use employs a number of people and it contributes to the Council's rates income. Therefore, there is a modest economic benefit arising from the use of what is likely to otherwise be a vacant site. I acknowledge that upholding the notice and refusing planning permission is likely to have a significant effect on the ability of the appellant to continue his business, leading to its relocation, scaling down, or possible closure, with staff having to seek alternative employment. However, the small scale economic benefits of the use do not outweigh the planning harm caused.
16. The appellant, his partner and staff are settled in the area and it is entirely understandable that they would wish to remain there. However, based on the available evidence any interference in their Human Rights is a proportionate response to the breach. A fair balance is struck between their rights and the public interest of upholding LP policies and national policy preventing flood risk and safeguarding biodiversity. These policy objectives could not be achieved if there were a lesser level of interference.
17. There is no firm evidence to indicate that there is a significant shortage in employment opportunities available in the area. Therefore, I am not persuaded that anyone employed at the site would have to leave the UK to find alternative employment or that upholding the notice and refusing planning permission would restrict their freedom to work in this country.

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<sup>2</sup> *Beach v SSETR & Runnymede BC* [2001] EWHC 381 (Admin).

Appeal Decision APP/V2255/C/18/3205839

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*Conclusion on ground (a)*

18. The use is on a site with a high risk of flooding and it fails to conserve biodiversity. Based on the available evidence, none of the other matters outweigh the planning harm caused. Therefore, the use does not accord with the Development Plan and it is inconsistent with the Framework.

**Ground (f) appeal**

19. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
20. At s173, the Act sets out two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control that has occurred. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach. The Council did not specify in the notice whether it was one or both above purposes that it sought to achieve. However, the Council identified a harmful risk of flooding and harm to biodiversity in its reasons for issuing the notice. The above clearly goes beyond what could just be described as an injury to amenity. The notice requires the use to cease in its entirety and removal of all associated structures from the site. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the site to its condition before the breach took place.
21. The consequences of upholding the notice and refusing to grant planning permission for the use were dealt with on ground (a). The appellant did not suggest any alternative, lesser steps that could remedy the breach. Accordingly, nothing stopping short of the steps set out in the notice as corrected would remedy the breach.
22. Consequently, the required steps do not exceed what is necessary to remedy the breach and the ground (f) appeal must fail.

**Ground (g) appeal**

23. The ground of appeal is that the time for compliance is unreasonably short.
24. The Council specified a compliance period of four months. This gives the appellant limited time in which to search for and secure alternative premises whilst retaining business continuity, which includes maintaining staff employment, as far as possible. Due to the size of the site, alternative premises enabling facilities of a similar scale to be provided are unlikely to be in abundant supply in the area. The appellant may also have to seek and obtain planning permission before he can move to an alternative site.
25. The twelve month compliance period sought by the appellant would perpetuate the planning harm caused by the use. However, a period of nine months would strike an appropriate balance between remedying that harm whilst also allowing the appellant enough time to relocate his business to any alternative premises found in an orderly fashion and/or to wind the business down, and to remove associated structures from the site. It would also allow affected staff sufficient time to seek alternative employment and accommodation if necessary. In turn, this would help to minimise the extent of disruption to the business and its staff as far as possible. Moreover, nine months would enable

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5

Appeal Decision APP/V2255/C/18/3205839

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more advanced warning of the ceasing of use of the site to be given to customers, the majority of whom I understand are based internationally. This would minimise the risk of any disruption caused by an influx to the area of HGV drivers who had insufficient time to make alternative rest stop arrangements.

26. Accordingly, the ground (g) appeal succeeds to that limited extent.

### **Conclusion**

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the deemed application.

### **Formal Decision**

28. It is directed that the enforcement notice be corrected by:

- Inserting in paragraph 5 ("What You Are Required To Do") after step (i), the following step (ii): "Cease the use of the land as an encampment providing refreshments, washing facilities and sleeping accommodation".
- Paragraph 5 steps (ii)-(iv) are to be renumbered (iii)-(v) accordingly.

and varied by:

- At paragraph 6 ("Time For Compliance") replacing "4 (four) months" with "9 (nine) months".

Subject to the above corrections and variation the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Stephen Hawkins*

INSPECTOR





## Appeal Decision

Site visit made on 8 May 2019

by **A Thompson BSc BTP MRTPI MRICS**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> July 2019

**Appeal Ref: APP/V2255/W/18/3209727**

**Newington Working Men's Club, High Street, Newington, Kent, ME9 7JL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Paul Giles against the decision of Swale Borough Council.
- The application Ref 18/500767/FULL, dated 4 February 2018, was refused by notice dated 12 June 2018.
- The application sought planning permission for retrospective demolition of former Working Men's Club and erection of 9no. dwellings and 1 no. maisonette together with carports for garaging of cars without complying with conditions attached to planning permission Ref 17/504342/FUL, dated 20 December 2017.
- The conditions in dispute are Nos 2 and 11 which state that:  
Condition 2 No development shall take place other than in complete accordance with the mitigation measures set out in the acoustic survey submitted and agreed under reference 17/504046/SUB.  
Condition 11: All windows on the front façade of the block fronting onto the High Street shall be non-openable only. Before the development is occupied a scheme of mechanical ventilation to be fitted in each dwelling to draw air from the rear façade to the front rooms shall be submitted to and approved in writing by the Local Planning Authority. The scheme to be approved shall also include details of long-term maintenance.
- The reasons given for the conditions are:  
Condition 2: To minimise impacts to future residents from road noise.  
Condition 11: In the interests of residential amenity.

### Decision

1. The appeal is allowed and planning permission is granted for retrospective demolition of former Working Men's Club and erection of 9no. dwellings and 1 no. maisonette together with carports for garaging of cars at Newington Working Men's Club, High Street, Newington, Kent, ME9 7JL in accordance with the application Ref 17/504342/FUL, made on 21 August 2017, without compliance with condition number 11 previously imposed on planning permission Ref 17/504342/FUL dated 20 December 2017 and subject to the conditions set out in **Annex A**.

### Procedural and Preliminary Matters

2. Work on the development commenced in July 2017. Since the appeal was submitted in August 2018 construction work has continued and appeared largely complete at the time of my site visit. I am unclear whether further construction work is still required and what conditions have or have not been

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Appeal Decision APP/V2255/W/18/3209727

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fully discharged. Having regard to these factors, and subject to my conclusions in respect of Conditions 2 and 11 that are the subject of this appeal, I have imposed all the planning conditions attached to planning permission Ref 17/504342/FUL, apart from Condition 1 ( as it is evident that work has commenced) and Condition 10 ( as I have clear evidence that this condition has been satisfactorily discharged).

3. Since the Council's decision letter was issued, the National Planning Policy Framework (the Framework) has been revised and updated. Although paragraph numbering has changed, the thrust of the Paragraph 109 of the 2012 Framework , which is referred to in the Council's decision notice, has been carried forward into Paragraph 170 of the current version published in February 2019. During a reference back exercise, the Council has drawn my attention to Paragraph 180 of the current Framework. As this policy also accords with the thrust of the earlier Framework<sup>1</sup>, I consider that there has been no material change in national policy of direct relevance to this case since the Council's decision.

### Main Issues

4. There are two main issues. The effect that removing Condition 11 would have on living conditions for occupiers of the block of properties fronting onto the High Street and the effect that varying Condition 2 would have on living conditions for occupiers of the block of properties fronting onto the High Street.

### Reasons

#### Condition 11

5. The Council has two principal concerns with the deletion of this condition. First that allowing openable windows on the front façade of the block that fronts the High Street would be potentially harmful to the health of future occupants of the dwellings by virtue of potentially drawing vehicle pollution into habitable rooms. Second, that allowing openable windows in that location would also increase potential for significant noise and general disturbance from traffic on the A2.
6. In relation to the concern about air quality, Condition 10 of planning permission reference Ref 17/504342/FUL required that before the dwellings on the appeal site were occupied, an Air Quality Assessment (AQA), undertaken by a competent person in accordance with current guidelines and best practice, be submitted and agreed in writing by the local planning authority.
7. The required AQA<sup>2</sup>, dated January 2018, was submitted to the Council and on 16 March 2018, a memorandum from the Council's Environmental Protection Officer confirmed that he had reviewed the AQA and concluded it was a competent report which met the requirements of Condition 10.
8. Amongst other details, the AQA predicted air pollutant concentrations for future residents of the development at 10 locations on the proposed development, including at 5 locations on the façade of the development facing the High Street. It is stated by the appellant that the AQA was based on the provision of

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<sup>1</sup> Paragraphs 120 and 123 National Planning Policy Framework 2012

<sup>2</sup> Air Quality Assessment: Former Working Men's Club, High Street, Newington: Air Quality Consultants: January 2018

Appeal Decision APP/V2255/W/18/3209727

natural ventilation to the residential units and did not take account of a sealed façade. The AQA concluded that the effects of local traffic on the air quality for residents living in the proposed development were considered to be acceptable at the worst-case locations assessed, with pollutant concentrations being below the air quality objectives.

9. Given that the AQA is a detailed and thorough report, of direct relevance to this appeal and its findings have been agreed by the Council<sup>3</sup>, I give the AQA considerable weight at a material consideration in this case.
10. The appellant's air quality report<sup>4</sup> submitted in support of the current appeal, draws heavily on the AQA, but also includes monitoring results for nitrogen dioxide (NO<sub>2</sub>) levels in 2017, that were not available when the AQA was drafted, at two sites outside and opposite the proposed development. The data from 2017, while suggesting a small increase compared to 2016, confirmed that measured concentrations did not exceed the Government's relevant air quality criteria for NO<sub>2</sub>.
11. The appellant has also submitted a detailed report<sup>5</sup> setting out the results of an investigation of internal air quality in one of the new dwellings<sup>6</sup> that fronts the High Street. The investigation, albeit of only limited duration, was designed to test a worst-case scenario during the morning rush hour, including with open windows on the front façade. This investigation found that there were no significant gaseous elevations and although some particulate elevations were recorded, they were all within the Health and Safety Executive recommended healthy levels.
12. Both the additional NO<sub>2</sub> data from 2017 and the findings of the internal air quality investigation, which have not been substantively challenged by the Council, add further weight to the appellant's case that air quality conditions at the façade of the new development fronting the High Street are acceptable.
13. The appellant also argues that the introduction of ultra-low emission vehicles and the continued tightening of international/national vehicle emission standards are likely to result in a decline in pollutant concentrations, in particular NO<sub>2</sub>, in locations such as Newington High Street. The appellant's have also submitted a report<sup>7</sup> prepared in support of the Swale Strategic Air Quality Action Plan (AQAP). Amongst other findings, this report indicates that the Newington Air Quality Management Area (AQMA) is likely to be compliant with air quality standards for NO<sub>2</sub> by 2020.
14. While I accept changes in technology and legislation are likely to lead to a reduction in harmful vehicle emissions, the likely level of impact of these changes in relation to air quality conditions at the façade of the properties fronting the High Street is not clear. Similarly, while I agree that the AQAP report appears encouraging, that report relates to a very early stage in the AQAP process and refers to conditions in the AQMA as a whole, rather than being site specific and, for these reasons, I consider these elements of evidence have only limited weight in this case.

<sup>3</sup> Application Reference 18/500760/SUB

<sup>4</sup> Air Quality Report: Air Quality Consultants: July 2018

<sup>5</sup> Indoor Air Quality Report: Safe Air Quality Limited: 2018

<sup>6</sup> 2 Charlotte Court

<sup>7</sup> Swale Strategic AQAP 2018-2022 Report 1: Source Appointment and Options Assessment: March 2018



Appeal Decision APP/V2255/W/18/3209727

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15. The Council states that the development is situated within the Newington AQMA where there is evidence of an "exceedance" of NO<sub>2</sub> along the High Street, including at a monitoring site outside the development site, referred to as Site No. SW19.
16. The Council's decision to allow the development to go ahead was, in part, on the basis that planning conditions could be imposed that ensure satisfactory living conditions for occupiers of the new development by requiring that windows on the High Street elevation of the development could not be opened and that ventilation for those properties that fronted the High Street would be drawn from the rear elevation.
17. The evidence set out in the AQA<sup>8</sup> indicates that predicted air quality at the rear of the properties fronting the High Street would be better, in terms of lower levels of pollutants, than at the front. This is most notably the case in relation to NO<sub>2</sub>, where predicted levels at the rear elevation are around half the level at the front elevation. The Council is also concerned about the "street canyon" effect of introducing building facades close to the road, although the appellant directly addresses this issue in his evidence<sup>9</sup>.
18. In support of their case the Council has submitted a spreadsheet of NO<sub>2</sub> tube readings for a number of monitoring sites, including Site No. SW19. The spreadsheet shows NO<sub>2</sub> levels in excess of the annual mean objective of 40 µg/m<sup>3</sup> for most months in 2018.
19. In response to this spreadsheet evidence, the appellant submitted a detailed explanation of why the "raw" monthly measurements cannot be compared directly to an annual average objective. The Council acknowledge that the spreadsheet information is only raw data, that there are not enough readings to calculate an annual average, and that ratified data is not yet available. Having regard to these considerations, I consider the Council's spreadsheet data for 2018 has very limited weight as a material consideration in this case.
20. I have also had regard to the detailed submission by Newington Parish Council who share the Council's concern about changing the planning conditions attached to the permission.
21. My attention has been drawn to detailed air quality evidence submitted in relation to a recent appeal that was dismissed and an application that was approved, for developments that are near the appeal site. Although I accept that the appeal site lies between these two developments, I have very little information about each of the schemes and the air quality submissions do not add substantive evidence (beyond that set out by the appellant and Council) that is of direct relevance to this appeal and therefore the evidence carries limited weight in this case.
22. For the reasons I have explained earlier in this letter, I agree with the Parish Council's view that only limited weight can be placed on assumptions about future air quality conditions in the Newington AQMA, or the impact of changes in vehicle technology. I note the Parish Council's evidence regarding additional lorry movements generated by a new quarry. However, there is insufficient evidence for me to identify what the impact of this permission might be on air

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<sup>8</sup> Table 9 Predicted Concentrations of Nitrogen Dioxide, PM<sub>10</sub> and PM<sub>2.5</sub> in 2018 for New Receptors in the Development Site

<sup>9</sup> Paragraphs 2.9-2.13 Air Quality Report: Air Quality Consultants: July 2018

Appeal Decision APP/V2255/W/18/3209727

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quality conditions at the appeal site and accordingly I give this matter limited weight.

23. Paragraph 170 of the Framework makes it clear that decisions should prevent those who occupy new development being put at unacceptable risk from unacceptable levels of air or noise pollution. Policies ST1 and Policy DM14 of the local plan, in addition to promoting good design and accordance with national policy on pollution, seek to ensure that development is appropriate to its location and causes no significant harm to amenity. Paragraph 180 of the Framework reinforces the importance of considering the appropriateness of location in terms of the likely effects (including cumulative effects) of pollution on health and living conditions. The Council's evidence also refers to paragraph 91(c) of the current Framework which I consider is less relevant than paragraphs 170 and 180 in this case.
24. Having regard to this policy context and the evidence before me, I find that the overall balance of evidence clearly supports the view that air quality conditions (both existing and predicted) at the façade of the buildings fronting the High St are acceptable. I acknowledge that the Council's position on this matter is reasonable, insofar as air pollutant levels at the rear of the properties fronting the High Street are better than the front and that drawing air from the back of the building may improve air quality conditions in these dwellings. However, in view of the findings of the Indoor Air Quality assessment, I do not think that this is a decisive point in favour of the existing condition.
25. Furthermore, having regard to the air quality evidence overall and the policy context, I do not consider that imposing a requirement that the windows on the High Street are unopenable and that air should be drawn from the rear of the block is necessary in order for the development to be acceptable in planning terms from an air quality perspective.
26. Turning to the concern about noise and general disturbance, the key substantive evidence on this point is set out in the appellant's noise impact assessment<sup>10</sup> (NIA).
27. Consistent with my observations at the site visit, the NIA notes that the A2 High Street is a busy main road with fairly constant levels of road traffic, including numerous Heavy Goods Vehicles, during the daytime period. In the light of a noise level survey and assessment, the NIA concludes that development site is exposed to fairly high levels of external environmental noise during both the daytime and night-time periods.
28. Having regard to the policies in noise in the Framework<sup>11</sup>, the NIA sets out the Recommended Acoustic Design Criteria in British Standard 8233:2014 "*Guidance on sound insulation and noise reduction for buildings*".
29. The NIA states that with the windows open, the internal noise limits outlined in BS8233:2014 for living rooms, bedrooms and dining rooms within the block fronting the High Street will be exceeded. In addition, the internal noise limits for bedrooms<sup>12</sup> during the night-time will also be exceeded and therefore a scheme of mitigation measures is required.

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<sup>10</sup> Noise Impact Assessment: MRL Acoustics Limited: July 2017.

<sup>11</sup> NIA refers to Paragraph 123 of the Framework (2012). The thrust of this policy is now set out in Paragraph 180 of the Framework (2019).

<sup>12</sup> As set out in BS8233:2014

Appeal Decision APP/V2255/W/18/3209727

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30. The NIA then sets out a scheme of mitigation measures to ensure that the internal noise limits are achieved without the need to open a window for ventilation<sup>13</sup>.
31. In the absence of any further substantive evidence on noise beyond the NIA, I find that that allowing openable windows on the front façade of the block fronting onto the High Street would lead to potentially harmful levels of noise and disturbance in the habitable rooms on that frontage.
32. Thus in conclusion on Condition 11, I find that:
- (a) the requirement that all windows on the front façade of the block fronting onto the High Street shall be non-openable is necessary in order to avoid traffic noise giving rise to significant adverse impacts on the health and quality of life of occupiers of the development. This element of the condition would accord with the Framework and with policies ST1 and DM14 of the local plan insofar as these seek to ensure that new development provides a healthy environment for occupants of new development.
  - (b) the requirement for a scheme of ventilation to be fitted and maintained in each dwelling to draw air from the rear façade to front rooms, whilst reasonable, is not necessary from an air quality perspective.
  - (c) subject to the provision of the noise mitigation measures required in the NIA (which I consider further in relation to Condition 2 below), the requirement for a scheme of ventilation to be fitted and maintained in each dwelling to draw air from the rear façade to front rooms is not necessary from a noise perspective.
33. Turning to other matters raised by the appellant, I note it is argued that imposing a requirement that windows should be non-openable in perpetuity is potentially unenforceable or otherwise contrary to national policy on planning conditions. However, for the reasons set out above, I find that this element of the condition is necessary, relevant to planning and to the development to be permitted, precise and reasonable in all other respects. Furthermore, I see no basis for concluding that this requirement is unenforceable. No substantive evidence has been submitted in relation to the Planning Court case referred to by the appellant and therefore it does not change my conclusion on this point.
34. It is also stated that planning permission reference SW/11/0906 allowed openable windows on the block fronting the High Street. I do not agree. Condition 29 of SW/11/0906, is identical to Condition 11 of planning permission 17/504342. Condition 29 states that all windows on the front façade of the block fronting onto the High Street shall be non-openable only. The earlier permission reference SW/06/0115 is not included in the evidence before me, but as SW/11/0906 was a renewal of SW/06/0115, it is on balance likely that the same planning condition was also imposed in relation to the earlier permission.

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<sup>13</sup> NIA Paragraph 5.5.



Appeal Decision APP/V2255/W/18/3209727

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*Condition 2*

35. The Council has identified three principal concerns about modifying Condition 2 to include reference to "Titon-Sonair" ventilation system (the system).
36. First, that the system, if installed on the front façade of the development, would draw harmful air pollution into the habitable rooms in the block fronting the High Street. Second, that the system would require a filter to be installed and maintained in order to reduce particulate matter and that it would be difficult to enforce retention and replacement of the filters. Third, that installation of the system would be contrary to the requirements of condition 21 of planning permission 17/504342/FULL.
37. I have found that air quality at the front façade would be acceptable and therefore the installation of a ventilation system that draws air from the front façade would not create unacceptable health risks for occupiers of the habitable rooms in the block fronting the High Street.
38. In relation to the concern about retention or replacement of filters. The appellant's evidence is that the system does not include a filter to improve air quality. That accords with my understanding of the evidence submitted about the system i.e. that it is designed to attenuate noise only. The reference to "filter" in the manufacturer's information appears to refer to different filters achieving differing levels of noise attenuation and is not a reference to air quality.
39. Condition 21 requires prior approval by the Council of any proposal to install, amongst other things, vents, ducts, grilles and trickle vents on the High Street elevation of the development. Airbricks, which I consider to be a form of vent, have been installed on the front elevation in each of the appeal properties that front the High Street.
40. There is no evidence before me that approval was sought for the installation of airbricks on this elevation, but whether or not, is not a matter for this appeal.
41. The reason why the Council imposed condition 21 was to preserve or enhance the character and appearance of the Newington High Street conservation area. I consider the airbricks that have been installed are unobtrusive and have no impact on the character or appearance of the conservation area. Accordingly, variation of condition 2 proposed would preserve the character or appearance of the conservation area and thus accord with the provisions of Policy DM33 of local plan.
42. Notwithstanding my findings that the Council's concerns are unfounded, I do not consider that modification of Condition 2 is necessary or appropriate. Condition 2 requires that all development should be in complete accordance with the acoustic survey submitted and agreed under reference 17/504046/SUB, which means, in this case, the NIA.
43. Section 5 of the NIA sets out recommended mitigation measures in relation to development. In addition to the provision of adequate double glazing, paragraphs 5.15-5.18 deal specifically with ventilation of living rooms, dining rooms and bedrooms in the dwellings fronting onto the High Street (which are referred to in the NIA as Block A). Paragraph 5.16 identifies 3 alternative options for providing acoustically treated ventilation that would ensure that the

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

7

Appeal Decision APP/V2255/W/18/3209727

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required internal noise limits are met, without the need to open the windows for ventilation and cooling.

44. The first of the options set out in Paragraph 5.16, at bullet 1, identifies a suitable option as ... provision of acoustically screened wall mounted mechanical (i.e. powered) acoustic ventilators such as Titon Sonair F+ or [Silvavent Energex SHHRV units].
45. Given that NIA already states that the Titon Sonair system is an appropriate means of ensuring the necessary internal noise limits are met and Condition 2 requires compliance with the NIA, revision to explicitly make reference to the Titon Sonair system is unnecessary and would lack precision, as it would not be clear what the additional reference means in the context of the condition as a whole.
46. In conclusion on this issue, varying Condition 2 to include reference to the Titon Sonair system would not cause harm to the living conditions for occupiers of the block of properties fronting onto the High Street, because it is identified in the NIA as an effective approach. Thus I do not consider that the variation of the condition in this way would conflict with policies ST1, CP4 and DM14 of the local plan or the Framework insofar as these seek to ensure that new development is well designed and provides satisfactory living conditions for occupiers of the development. And I do not consider the variation in Condition 2 would conflict with Policy DM33 for the reasons set out earlier.
47. However, I find that varying the condition as proposed would make the condition imprecise and, in any event, is unnecessary. Accordingly, amending the condition would be contrary to the Framework<sup>14</sup> which amongst other things requires that planning conditions should be precise and necessary.

### Conclusion

48. For the reasons I have set out above, I conclude that Condition 11 should not be removed, but should be varied to simply require that all windows on the front façade of the block fronting onto the High Street shall be non-openable only. I do not agree that Condition 2 should be varied and this element of the appeal fails.

*Anthony Thompson*

INSPECTOR

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<sup>14</sup> Paragraph 55.



Appeal Decision APP/V2255/W/18/3209727

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#### **ANNEX A – PLANNING CONDITIONS**

Condition 1: No development shall take place other than in complete accordance with the mitigation measures set out in the acoustic survey submitted and agreed under reference 17/504046/SUB.

Condition 2: No development shall take place other than in complete accordance with the following drawings (all prefixed 1603/B): 01revC, 04revA, 05revA, 06revA and 09revA, drawing 1603/P07revA, and the gates detail submitted by email Saturday 16.12.2017.

Condition 3

(i) No development shall take place other than in accordance with the details, including the implementation, maintenance and management strategy, provided under the sustainable surface water drainage scheme agreed under application reference 17/504046/SUB.

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

Condition 4: The external materials to be used on the development hereby permitted shall be those as specified and agreed under application ref. 17/504046/SUB.

Condition 5: The brickwork on the entirety of the frontage block hereby permitted shall be laid in Flemish bond, and the remainder of the development shall be laid in Flemish Garden Wall bond, unless otherwise agreed in writing by the Local Planning Authority.

Condition 6: No windows or doors shall be installed until detailed drawings, at a suggested scale of 1:5, of all new external joinery work and fittings together with sections through glazing bars, frames and mouldings, have been submitted to and approved in writing by the Local Planning Authority before any development takes place. The development shall be carried out in accordance with the approved details.

Condition 7: No external joinery work shall take place until constructional details, at a suggested scale of 1:5, of the eaves, ridges, gable bargeboards, and verges to be used on the development hereby permitted 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.

Condition 8: No dormer windows shall be constructed until constructional details of the dormer windows and High Street frontage boundary walls and railings hereby permitted have been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the agreed details.

Prior to occupation

Condition 9: All windows on the front facade of the block fronting onto the High Street shall be non-openable only.

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

9

Appeal Decision APP/V2255/W/18/3209727

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Condition 10: The dwellings hereby permitted shall not be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Condition 11: The dwellings hereby permitted shall not be occupied until a scheme of biodiversity enhancements, such as bat boxes, bird nesting boxes, or other improvements, has been submitted to and approved in writing by the Local Planning Authority. The enhancements shall be implemented as agreed and thereafter retained in perpetuity.

Condition 12: Before the dwellings hereby approved are first occupied, a properly consolidated and surfaced access (not loose stone or gravel) shall be constructed, details of which shall have been submitted to and approved by the Local Planning Authority. The first 5m of the access from the highway edge shall be constructed in a bound surface.

#### During construction

Condition 13: The dust suppression measures agreed under application ref. 17/504046/SUB shall be implemented throughout the construction phase of the development.

Condition 14: The measures to prevent deposit of mud on the highway agreed under application ref. 17/504046/SUB shall be implemented throughout the construction phase of the development.

Condition 15: During construction provision shall be made on the site to accommodate operatives' and construction vehicles loading, off-loading or turning, and parking for site personnel / operatives / visitors. Such parking shall be provided prior to the commencement of the development.

Condition 16: No construction or demolition work shall take place on the site on any Sunday or Bank Holiday, nor on any other day except Monday to Friday between 0730 - 1900 hours and Saturday between 0730 - 1300 hours, unless with the prior written approval of the Local Planning Authority.

#### Other

Condition 17: 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.

Condition 18: 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 whichever planting season is agreed.

Condition 19: No meter boxes, vents, ducts, grilles or trickle vents shall be installed on the High Street elevation without the prior written approval of the Local Planning Authority.

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

10

Appeal Decision APP/V2255/W/18/3209727

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Condition 20: The vehicle parking spaces shown on the approved drawings shall be provided, surfaced and drained before the dwellings hereby permitted are first occupied, and shall thereafter be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space. No doors, gates, or other means of enclosure shall be installed to the front of the car ports hereby permitted unless otherwise agreed in writing by the Local Planning Authority

Condition 21: Upon completion, no further development, whether permitted by Classes A, B, C or D or E of Part 1 of Schedule 2 Town and Country Planning (General Permitted Development) Order 1995 or not, shall be carried out without the prior permission in writing of the Local Planning Authority.

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## Appeal Decision

Site visit made on 4 June 2019

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

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

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**Appeal Ref: APP/V2255/W/18/3209070**

**Greenacres Farm, Norton Road, Norton ME9 0EZ**

- 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 David Butler against the decision of Swale Borough Council.
  - The application Ref 17/505803/FULL, dated 3 November 2017, was refused by notice dated 18 July 2018.
  - The development proposed is the conversion of an agricultural building to a rural worker's dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The National Planning Policy Framework (the Framework) was published following the decision of the Council. The Council and appellant had the opportunity to comment and I have taken its contents into account in coming to my decision.

### Main Issue

3. Whether there is an essential need for a dwelling to accommodate a rural worker.

### Reasons

4. Greenacres Farm comprises a top fruit and stone fruit operation producing cherries, apples and pears. I understand that the appellant has also been running a concurrent business at the site. It is outside built-up area boundaries and in the open countryside, an isolated rural location some distance from the nearest settlement.
5. The Framework confirms that new isolated homes in the countryside should be avoided unless there are very special circumstances, such as the essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work. I note that the reference to those taking majority control of a farm business did not appear in the earlier Framework against which the planning application was determined.
6. Policies ST3 and CP3 of the Swale Borough Local Plan (LP) resist the provision of new dwellings within the open countryside. However, Policy DM12 of the LP enables provision of dwellings for rural workers provided that there is an essential need for a full-time worker to be readily available at most times,

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Appeal Decision APP/V2255/W/18/3209070

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- there be no suitable existing dwelling available nearby, the dwelling would maintain or enhance the landscape and countryside character and to explore the conversion of existing buildings before considering a new building.
7. The Council accept that there is an essential need for a rural worker to live at Greenacres Farm and support the farm business. I see no reason to disagree with their conclusion in this regard.
  8. I note that there is an existing dwelling at the farm that was granted planning permission in 2009 to provide for that need. The occupant of the existing dwelling has recently retired due to ill health and they continue to occupy that dwelling in accordance with the restrictions placed on it. They do not wish to vacate this property. The appellant would be taking majority control of the farm business. Nevertheless, this would not, in and of itself, justify the provision of a second dwelling if that need could be provided by alternative means.
  9. Therefore, for the purposes of my decision and taking account of relevant case law<sup>1</sup>, I need to firstly consider whether the occupants of the existing dwelling could reasonably provide the necessary support for the farm and if they cannot, secondly, ascertain whether that accommodation can reasonably be held to be available.
  10. I note that the principal reason for the essential need is to check the cold storage building three times a day and address any alarms in that building. It is unclear how often attendance is required to deal with those alarms, or the amount of work required when the alarms are activated. In addition, reference is made to the need to deal with frost, manage the seasonal work-force and this isolated farm business is susceptible to rural crime such as vandalism and theft. I understand that the amount of land under production has grown in recent years and has undergone significant investment in replanting orchards with higher yielding varieties and expanding cherry production.
  11. I have limited details as to the reasons why the occupant of the existing dwelling has retired or whether they would be able to provide some support to the business, such as dealing with alarms in the building and providing surveillance and security, including in relation to rural crime. If they were able to provide sufficient support to allow the business to operate, a second dwelling would not be required. However, on the basis of the evidence in front of me and taking account of the fact that the appellant would be taking majority control of a farm business, I am unable to conclude whether or not they would be available to provide that support.
  12. If they were unable to provide that support, it is suggested that they could vacate the property to free it up for occupation by the appellant and his family. I understand that the existing occupant continues to comply with the occupancy restrictions on the dwelling arising from the earlier planning permission. They do not wish to vacate that property. However, it is not clear whether that dwelling would become available at some point in the future to meet the needs of the enterprise. The proposal may only, therefore, be required for a temporary period. The proposal is for permanent occupation and it is unclear for what period the dwelling would be required. On the basis of the

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<sup>1</sup> Keen v Secretary of State for the Environment and Aylesbury Vale District Council [1996] JPL 753 and J R Cussons and Son v Secretary of State for Communities and Local Government [2008] EHW 443

Appeal Decision APP/V2255/W/18/3209070

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evidence and taking account of these factors, it is unclear whether or not the accommodation can reasonably be held to be available. In any event, this would not overcome the issue as to whether the occupants would be available to support the business.

13. Policy DM12 of the LP states that the dwelling should maintain or enhance the landscape and countryside character and to explore the conversion of existing buildings before considering a new building. The building to be converted was constructed under agricultural permitted development rights set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) in 2015. In this case, I note that the proposal would convert an existing building and such a conversion would maintain the landscape and countryside character of the area.
14. For these reasons, I conclude that, although there is an essential need for a dwelling to accommodate a rural worker, there is an existing dwelling on the site. It has not been established that the existing dwelling would not be available to meet that need. Consequently, I am unable to conclude that the proposed conversion of an agricultural building to a rural worker's dwelling would be required to meet that need. As such, the proposed development would not comply with Policies ST3, CP3 and DM12 of the LP or the Framework.
15. As a result, the proposal would also conflict with Policy DM14 of the LP that provides general development criteria including that development should accord with the policies of the LP unless material considerations indicate otherwise.

#### *Other matters*

16. Reference has been made to a potential mobile home in order to meet the need for a rural worker's dwelling. However, the appeal relates to permanent accommodation and a mobile home does not form part of this application such that it is not before me to consider. I note that the existing dwelling is not of sufficient size to accommodate the existing occupants and the appellant with his family. I understand that no housing is available close to the farm that would be affordable to the appellant or meet his identified needs.
17. The appellant has suggested restrictive occupancy conditions for the proposed dwelling. However, an agricultural occupancy condition would be required if the appeal were to be allowed in any event. As a result, this would not overcome my conclusions on the main issue.
18. A Unilateral Undertaking has been submitted under Section 106 of the Town and Country Planning Act 1990 to link the proposed dwelling to the agricultural land, including the existing dwelling. This would provide some certainty regarding the relationship of the dwelling to the agricultural land associated with it. Nevertheless, it would not alter my conclusions on the main issue.
19. I note that Class Q, Part 3, Schedule 2 of the GPDO would normally allow the conversion of agricultural buildings to residential use. However, as this building was constructed under agricultural permitted development rights, the GPDO would not allow conversion of a building on the farm under Class Q until at least 2025. This potential conversion would comprise a fall-back position. Had this building not been constructed, it may have been possible to convert another building to residential use to provide for the appellant's needs. I have

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3

Appeal Decision APP/V2255/W/18/3209070

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- taken these factors into account as material considerations of considerable weight, but they would not overcome my conclusions on the main issue.
20. My attention has been drawn to other appeal decisions. That at Rye Topping Farm, Scarborough<sup>2</sup> related to an additional dwelling where the existing dwelling was occupied by the elderly mother of the appellant, who continued to be involved in the running of the farm business. Significant detail was provided to justify the need for that additional dwelling that hasn't been provided in this case. This decision pre-dates the latest Framework.
  21. More information was also provided in support of a need for additional dwellings at Ashlyn Farm, Somerset<sup>3</sup> and at Rigg Hall, North Yorkshire<sup>4</sup>. The circumstances presented in both cases justified provision of an additional dwelling. Both were assessed against Planning Policy Statement 7: Sustainable Development in Rural Areas that was replaced by the original Framework.
  22. I note that these appeal decisions relate to sites in other parts of the country and are subject to other local planning policies, such that there was a different policy framework to those decisions. Taking all this into account, I consider that they are not directly comparable to this case and I need to consider this appeal on its individual merits.
  23. The appeal site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) that is designated to protect rare and vulnerable birds including regularly occurring migratory species. New residential development would be likely to place additional pressure from recreational disturbance on the SPA. The proposed development, in combination with other projects, would contribute to that pressure. Nevertheless, were I to consider allowing the appeal, I would need to consider whether an appropriate assessment would be required in relation to the effect of the development on the SPA.
  24. As I have concluded that the proposed development would conflict with other development plan policies, I have not completed an appropriate assessment. I understand that the appellant has made a payment toward the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. However, without an appropriate assessment it is unclear whether or not the financial contribution would provide adequate mitigation of any effects of the development on the SPA. On that basis, I conclude that there is an unacceptable risk of harm on the SPA such that the proposal would be likely to conflict with the Birds Directive and the Framework. These seek to protect nature conservation sites of international importance, such as SPAs, including requiring adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of SPAs.

### Conclusion

25. For the reasons set out above, I conclude that on balance the proposed development would not accord with the development plan. Thus, having had regard to all other matters raised the appeal should be dismissed.

*AJ Steen* INSPECTOR

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<sup>2</sup> APP/H2733/W/17/3186812

<sup>3</sup> APP/V3310/A/09/2118524

<sup>4</sup> APP/W9500/A/08/2087370





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## Appeal Decision

Site visit made on 7 May 2019

**by P Wookey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

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**Appeal Ref: APP/V2255/W/19/3220316**

**Black Cottages, Mutton Lane, Ospringe, ME13 8UH**

- 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 Ed Jacobs against the decision of Swale Borough Council.
  - The application Ref 18/502098/FULL, dated 18 April 2018, was refused by notice dated 11 July 2018.
  - The development proposed is described as proposed replacement of Black Cottages with erection of 2 No. dwellings and car port.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. There is a dispute between the parties as to whether the appeal site is adjacent to or partly within the Ospringe Conservation Area (CA). On the basis of the CA plan submitted by the Council and the site plan submitted by the appellant<sup>1</sup>, part of the site is shown to be located within the CA and the appeal is determined on that basis.

### Main Issues

3. During the course of the appeal, the Council brought to my attention that the appeal site is located in the Medway Estuary and Marshes Special Protection Area (SPA). As a result, and on the basis that the Council has concerns that the development would have potential harmful effects on the SPA, it has to be considered on a precautionary basis and I have dealt with it as a main issue.
4. Therefore, the main issues are the effect of the development on:
  - the integrity of the Medway Estuary and Marshes Special Protection Area; and,
  - character and appearance, with particular regard to the CA.

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<sup>1</sup> Proposed Redevelopment of Black Cottages, Mutton Lane, Faversham, Kent ME13 8UH: Existing Site Plan 1970.01

**Reasons***Special Protection Area*

5. The appeal site is within 6 km of The Swale Special Protection Area (SPA) which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPA's are protected sites classified in accordance with Article 4 of the EC Birds Directive and 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 birds, in so far as these would be significant having regard to the objectives of this article.
6. Whilst the site is not directly connected or necessary to the management of the SPA, the Council considers that this development, combined with the effect of other projects could have an adverse effect on the integrity of the SPA by virtue that any residential development within 6km of any access point to the SPA would have the potential to increase the level of public access with harmful effects. As a result, any significant effects of the development proposed has to be considered on a precautionary basis.
7. The development proposed comprises two dwellings 6 km from the SPA and has access to a number and wide range of public open spaces in the surrounding area which are not associated with the SPA, including access to adjacent countryside footpaths. However, given the distance of the site from the SPA there is a reasonable likelihood that it would be accessed for recreational purposes by the future occupants of the development, and whilst minimal in itself, when combined with other residential developments in the area a significant effect would occur.
8. The view that there is a likelihood of a significant effect is reflected in the position of Natural England and the Council. In these circumstances the Conservation and Habitats Regulations 2017 requires that an Appropriate Assessment is carried out and as a result, I have consulted Natural England and the parties during the course of this appeal.
9. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European designated site, but consideration can be given to any conditions or restrictions which secure mitigation and consequently determine that the development proposed would not adversely impact on the integrity of the SPA.
10. Whilst Natural England consider that mitigation could be secured by a financial contribution to the Thames, Medway and Swale Strategic, Access, Management Strategy (SAMMS), through an appropriate mechanism, no evidence is before me which would demonstrate that a mechanism is in place to secure such a contribution, such as a unilateral undertaking (UU) provided by the appellant. As such, the lack of an acceptable mitigation measure would result in the development proposed having a likely significant adverse effect on the integrity of the SPA.

Appeal Decision APP/V2255/W/19/3220316

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11. Whilst I acknowledge that the appellant is willing to enter into such an arrangement, no such solution has been submitted for my consideration. Furthermore, this cannot be dealt with as a condition if the appeal was allowed, as planning obligations imposed on future development would be subject to the test set out in paragraph 56 of the National Planning Policy Framework (2019) (the Framework) that they are directly related to the development in question. An obligation imposed on future development that seeks to retrospectively address the impact of development previously approved, would not meet this test.
12. I must also consider whether there are imperative reasons of overriding public interest. In this case the development proposed involves two dwellings, which would make a limited contribution to the housing demand and would make effective use of previously developed land. For the reasons set out in the second main issue, the development proposed would not harm the setting of the adjacent Conservation Area. Whilst this adds weight to the support for the development proposed, this would not amount to an imperative reason of overriding public interest.
13. I therefore conclude that the development proposed would result in harm to the integrity of the Medway Estuary and Marshes Special Protection Area and would have an adverse effect without mitigation. It would therefore conflict with policy CP7 and DM28 of the Swale Borough Local Plan – Bearing Fruits (2017) (LP) and the Framework, which when read together seek to protect natural assets and restrict development that has an adverse effect on the integrity of a European site. Furthermore, in these circumstances the presumption in favour of sustainable development, set out in a paragraph 11 of the Framework, does not apply and the tilted balance is not engaged.

#### *Character and Appearance*

14. The CA is characterised by development of varying ages and architectural styles, predominantly in residential use which is occasionally interspersed by the more attractive historic terraces. There is a prevailing pattern of linear residential development along Water Lane, in the area where it meets London Road, though development further towards Mutton Lane and the edge of the village boundary has a more scattered pattern of development and mix of uses, including a school on Water Lane and a commercial use adjacent to Laurel Cottage, which is located directly opposite the appeal site.
15. The development proposed would clear the site and construct two three-bedroom houses with associated parking and outdoor living space, accessed directly from Mutton Lane. The appearance of the new two storey dwellings would partially reflect the simple form of architectural style and the materials used by other dwellings in the CA, with black weatherboarding on the front elevations and brickwork to the other elevations. The fenestration design and roof treatment would be sympathetic with the architectural styles prevalent in the immediate vicinity and overall the design would not appear to be incongruous or result in a harmful effect on the setting of the CA.
16. Whilst the Council is concerned that the development proposed would not adopt the traditional linear pattern of other development in the area, the proposed layout and design of the two new detached dwellings being set side by side, would not be out of keeping with other scattered development along Water Lane and Mutton Road and further would make good use of the site's

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

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configuration. Though the proposed dwellings would be set back a short distance from Mutton Lane, given that other residential development along Water Lane has a similar layout and given the appeal site's location this would not appear to be out of place with its surroundings and would not result in any significant visual harm to the character and appearance of the area or to the CA. Moreover, it is proposed to retain much of the mature vegetation which borders the site which would help the site blend in with its surroundings.

17. I note the comments of the Town Council regards the layout of the proposed new dwellings, but altering the arrangements for the car parking, cycle and refuse storage would result in an appearance which is less sympathetic to its surroundings and would not make efficient use of the site's configuration.
18. With regards the design aspects of the development proposed, the simple design and sympathetic use of materials would ensure that the proposed dwellings would not result in any significant visual harm to the CA and would not appear as an incongruous addition to the streetscape. Further, the development proposed would make a significant contribution to the setting of the CA and the surrounding countryside by improving the existing appearance of a site which is unkempt and overgrown and makes little contribution to the intrinsic value of the landscape setting or beauty of the countryside in this area.
19. I conclude that the development proposed would not result in a harmful effect on the character and appearance of the surrounding area and would not be contrary to Policies CP4, CP8, DM14 and DM33 of the LP, which when read together seeks to ensure development achieves good quality design, protects the historic environment and responds positively to the character of the area. Furthermore, in carrying out my duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the development proposed would have no significant harmful effects on the desirability of preserving and enhancing the character and appearance of the CA.

#### **Other Matters**

20. The Council has acknowledged that it is not able to demonstrate a 5-year supply of housing land and has failed to deliver on its past three-year housing target. It states that it is undertaking measures to address that shortfall and that there are more sustainable, suitable sites which should be considered ahead of the appeal site. Whilst the certainty of the sites proposed by the Council are disputed by the appellant, as the appeal is dismissed on the main issue of its effect on the SPA, I have not pursued this matter further.
21. The parties contest whether the development proposed represents the replacement of existing dwellings or is new development. The Council states that its location would not represent sustainable development as described by the Framework and would be contrary to its rural restraint policy ST3 of the LP, which seeks to avoid development outside of established built up boundaries as identified in the settlement strategy. It is undisputed that the site is outside of the Ospringe village boundary. However, the Council acknowledges that the appeal site has previously been occupied by two cottages and an array of outbuildings. Based on my site visit observations, whilst the site is in an overgrown state, the foundations of buildings were still visible, and the evidence submitted by the appellant further supports the fact that the site was

Appeal Decision APP/V2255/W/19/3220316

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previously used for residential purposes. Further, whilst the site may have an appearance of being overgrown and abandoned, there is evidence of its previous use and therefore it would represent the re-use of previously developed land and would be consistent with the advice provided in para 79 c) of the Framework and with policy ST3 of the LP.

22. Whilst the council states that its location is some distance from Faversham, the appeal site is well positioned to make full use of the local facilities in Ospringe which are within a reasonable distance and it is within walking distance of the public transport network and other facilities associated with the local residential use. It is also located in reasonably close proximity to dwellings and commercial uses located on Mutton Lane which fall within the village boundary. Given this context, the development proposed would not, in my view, represent an isolated form of development.
23. The planning history of the site has been brought to my attention, which includes a previously dismissed appeal. Whilst I have had regard to the previous Inspector's decision, as each case must be judged on its own merits, it has not altered my decision.

#### **Conclusion**

24. I conclude that the development proposed would have no harmful effects to the character and amenity value of the surrounding countryside and would be consistent with paragraph 200 of the Framework which encourages a local planning authority to take a favourable approach to new development within CA's that helps preserve a heritage asset. However, it would result in unacceptable harm to the SPA, which would be in conflict with the development plan policies in this regard. The benefits of the development proposed would not outweigh the harm to the SPA, and therefore for the reasons set out above, the appeal is dismissed.

*Paul Wookey*

INSPECTOR

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