

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 5 December 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.

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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 7 November 2019 (Minute Nos. 349 - 355) as a correct record, subject to including further wording to the resolution for item 2.8, 18/500257/EIFUL, Land adj. to Quinton Farm House, Quinton Road, Sittingbourne, Kent ME10 2DD, as below:

‘.....and the signing of a suitably worded Section 106 Agreement for the Heads of Terms as set-out in the report and updates.’

4. Declarations of Interest

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

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

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

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

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the

Member should declare their predetermination or bias and then leave the room while that item is considered.

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

Part B reports for the Planning Committee to decide

5. Planning Working Group

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

To consider application 19/501921/FULL, Land at Belgrave Road, Halfway, ME12 3EE.

6. Report of the Head of Planning Services

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

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on Wednesday 4 December 2019.

Issued on Tuesday, 26 November 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

Chief Executive, Services 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

5 December 2019

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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

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 – 5 DECEMBER 2019

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

PART 2

2.1 Pg 1 - 23	19/503553/FULL	SITTINGBOURNE	125 London Road
2.2 Pg 24 - 42	19/502769/FULL	IWADE	Culnells Farm, School Lane
2.3 Pg 43 - 57	19/500866/OUT	SITTINGBOURNE	Land at Swale Way, Great Easthall
2.4 Pg 58 - 78	19/501564/EIFUL	FAVERSHAM	Land at Perry Court, London Road

PART 3

3.1 Pg 79 - 94	18/506225/OUT	LOWER HALSTOW	Land to the South of School Lane
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PLANNING COMMITTEE – 5 DECEMBER 2019**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO - 19/503553/FULL		
APPLICATION PROPOSAL Demolition of existing detached dwelling. Erection of two buildings comprising of 10no. flats (4no. one bedroom flats in a two storey building & 5no. one bedroom and 1no. two bedroom flat in a three storey building) including parking, external areas and extension of existing vehicular access.		
ADDRESS 125 London Road Sittingbourne Kent ME10 1NR		
RECOMMENDATION Grant subject to conditions and securing a SAMMS contributions of £2210.04 (9 x £245.56)		
SUMMARY OF REASONS FOR RECOMMENDATION The application site is located within the existing built up area boundary where the principle of development is accepted. The Council is unable to demonstrate a 5 year supply of housing land and as such the proposal would contribute towards addressing this shortfall in a sustainable location. I am of the view that the design and layout of the dwellings has been well considered and will not result in any harm to the character or appearance of London Road and will not give rise to an unacceptable impact upon residential amenities. I have not identified any unacceptable harm in respect of highways matters, ecology, drainage or contamination.		
REASON FOR REFERRAL TO COMMITTEE Councillor Truelove call in.		
WARD Homewood	PARISH/TOWN COUNCIL	APPLICANT Ms Jasmine Friend AGENT Alpha Design Studio Limited
DECISION DUE DATE 22/11/2019		PUBLICITY EXPIRY DATE 08/10/19

Planning History

SW/75/0961 – Kitchen WC Extension
Approved Decision Date: 17.11.1975

SW/74/0043 – Bungalow and Garage Outline
Refused Decision Date: 23.10.1974

1. DESCRIPTION OF SITE

- 1.1 The application site comprises an existing residential dwelling at 125 London Road which is situated to the south side of London Road.

- 1.2 The existing dwelling at 125 London Road is a detached two storey Edwardian style property finished in a mix of yellow and red stock bricks with a plain concrete roof. The dwelling is currently unoccupied and the site is enclosed by metal fencing along the front boundary. The dwelling has a long rear garden which was cleared prior to submitting the planning application, as evident from the site visit the rear garden comprises overgrown weeds.
- 1.3 There is existing vehicular access to the site from London Road and an area of hardstanding to the side of the dwelling.
- 1.4 The site adjoins the boundaries of neighbouring properties including no. 127 London Road to the west of the site; no. 119 London Road and nos. 85, 83, 81, 79, 77, 75 and 73 Adelaide Drive to the east of the site.
- 1.5 The site is within the urban area of Sittingbourne.

2. PROPOSAL

- 2.1 The proposal seeks the demolition of the existing detached dwelling and erection of two buildings comprising 10 residential flats. A three storey building is proposed at the front of the site which would comprise 5no. one-bedroom flats and 1 no. two-bedroom flat. In the rear part of the site a two storey building is proposed which would comprise 4no. one bedroom flats.
- 2.2 The internal floor area of the flats would be as follows: 38.8 sqm for flats 1 and 2, 51.5sqm for flat 3, 54.2sqm for flat 5, 53.8sqm for flat 6, and 42sqm for flats 7, 8, 9 and 10, which are all one bedroom flats. Flat 4 has two bedrooms and the floor area would be 79.9sqm.
- 2.3 The building at the front of the site would replace the existing dwelling; it would be a three storey building with accommodation set in the roof space and would comprise the width of the plot with a 5m wide underpass to provide access to the rear of the site. The roof form of the building would comprise two gable end roofs with a higher gable element projecting to the front and rear of the site with large floor to ceiling glazing on the front and rear elevations creating a modern design. Four balconies (one external and three inset) are proposed on the front elevation to serve flats 3, 4, 5 and 6.
- 2.4 The building at the rear of the site would be two-storey and would be reduced in scale and form in comparison to the building at the front of the site. It would have a pitched, hipped roof, with a gable element fronting north/south. The flats would be accessed via external doors on the south-east elevation with the first floor flats accessed via an enclosed external staircase to prevent overlooking. No balconies are proposed on this building.
- 2.5 Both buildings would be finished in a mix of yellow stock brickwork at ground floor level and white self coloured render at first and second floor level for the external walls. The roof would be finished slate roof tiles with grey UPVC soffit and fascia's. Windows and doors would be anthracite grey aluminium.
- 2.6 A car parking area is proposed between the two buildings and would provide 10 car parking spaces (one per flat). The driveway and parking area are noted to be finished in a permeable paving surface. Two cycle stores are proposed, one adjacent to each of

the flat blocks and would provide one cycle space per flat. The existing vehicular access has been widened to 5m (from 4.1m) to allow two cars to pass each other. Two bin stores are proposed, one adjacent to each of the flat blocks.

- 2.7 With regard to boundary treatment a new 0.75m boundary brick wall to the front is proposed whilst 1.8m close boarded fencing is proposed along the eastern, southern and western boundaries, which would be reduced down to a 900mm fence adjacent to the vehicular access entrance
- 2.8 There are small areas of amenity space to the front/rear of the flat blocks, with additional planting in the form of 16 native species trees shown along the site boundaries and within the parking courtyard.
- 2.9 The density of development would be 125 dwellings per hectare.

3. SUMMARY INFORMATION

	Existing	Proposed – Front Building and site	Change (+/-)
Site Area (ha)	0.08ha	0.08ha	None
Approximate Ridge Height (m)	8.8m	9m and 9.8m	+ up to 1m
Approximate Eaves Height (m)	5.8m	5.3m and 6.7m	+ up to 0.9m
Approximate Depth (m)	17m	16m	- 1m
Approximate Width (m)	5.5m	12.9m	+ 7.4m
No. of Storeys	2	3	+ 1
Parking Spaces	2	10	+ 8
No. of Residential Units	1	10	+ 9
No. of Affordable Units	0	0	

	Proposed – Rear building
Approximate Ridge Height (m)	6.6m and 7.1m
Approximate Eaves Height (m)	5m
Approximate Depth (m)	11.1m
Approximate Width (m)	8.7m, 12.3m (with external staircase)
No. of Storeys	2

4. PLANNING CONSTRAINTS

- 4.1 No specific planning constraints

5. POLICY AND CONSIDERATIONS

- 5.1 The National Planning Policy Framework (NPPF): Paragraphs 7, 8, 11 (sustainable development); 59 – 76 (delivering a sufficient supply of homes); 102 (transport); 127 and 130 (achieving well designed places); 165 (sustainable drainage systems) 170 (local and natural environment); 175 (biodiversity) 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).

6. LOCAL REPRESENTATIONS

6.1 Eight letters and emails of objection have been received. Their content may be summarised as follows:

- Not in keeping with surrounding properties which are Edwardian and Victorian styles. Balconies do not fit in. Use of materials not complimentary to surrounding area.
- Modern look of buildings out of character with the area.
- Ridge height exceeds neighbour at 127 London Road. Resulting building will be imposing.
- Harm to residential amenity: loss of light and overshadowing.
- Harm to residential amenity: poor outlook due to two-storey building in rear section of plot.
- Harm to residential amenity: loss of privacy and overlooking to 104, 106, 108 London Road from balconies and windows on front elevation.
- Increased noise and disturbance from vehicles entering/leaving site to park in car park, and use of amenity area.
- Right to light covered by the common law Prescription Act 1832.
- Application has not been supported by a right to light survey.
- Bin store close to fence could lead to vermin and odours.
- Lack of parking provision within site as only 10 spaces.
- No provision for visitor or commercial/delivery parking.
- Increased pressure on parking in local area; Adelaide Drive, Cryalls Lane, Staplehurst Road, Gadby Road.
- Increased traffic and congestion.
- No statement regarding fire.
- Balconies would lead residents to suffer from pollution.
- Increased pollution from car parking area.
- No communal space to hang washing outside.
- Does not cater for family market unlike most of dwellings along London Road.
- Lack of demand for flats.
- Lack of restricted access to site could increase potential for crime from underpass.

7. CONSULTATIONS

7.1 Environment Agency raise no objection subject to conditions (30/09/2019)

30/09/2019: The Environment Agency reviewed the submitted information and raise no objection to the proposal subject to conditions regarding contamination, infiltration of surface water drainage and piling/penetrative foundation designs. Without these conditions the EA could object to the proposal in line with paragraph 170 of the National Planning Policy Framework because it cannot be guaranteed that the development will cause or be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

29/07/2019: The site is within a Groundwater Source Protection Zone 1, as such the Environment Agency requested a Preliminary Risk Assessment (PRA) to assess any risks to the groundwater environment associated with the development.

7.2 Natural England raise no objection (07/08/2019)

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 (29/07/2019)

05/04/2019: Requested a S.106 financial contribution of £360 per new resident (£360 x 24 – based on 2.4 people per unit) which equates to a financial contribution of £8640 towards expanding existing facilities within the vicinity of the development.

7.4 Southern Water raise no objection, though informatives are suggested (08/08/2019)**7.5 KCC Flood and Water Management raise no objection subject to conditions (14/08/2019)**

KCC Flood and Water Management note that no drainage strategy has been provided regarding how surface water is to be managed, however are satisfied that a detailed design can be submitted via a pre-commencement condition.

7.6 KCC Highways raise no objection subject to conditions (12/08/2019)

KCC Highways have requested the following conditions in relation to; construction management plan; surface water; provision and permanent retention of the vehicle parking spaces; provision and permanent retention of the vehicle loading/unloading and turning facilities; use of a bound surface for the first 5 metres of access from the edge of the highway; provision and permanent retention of the cycle parking facilities; and provision and maintenance of the visibility splays.

7.7 Kent Police raise no objection (12/08/2019)

Kent Police request a condition to address matters to design out crime including lighting, access controlled gate, windows/doors, and security measures.

7.8 Environmental Protection Team Leader raises no objection subject to conditions (14/08/2019)

They have requested conditions regarding suppression of dust; hours of construction work; land contamination and noise levels.

8. BACKGROUND PAPERS AND PLANS

- 8.1 The application has been supported by a site location plan; existing block plan; existing elevations; measured building survey; topographical survey; proposed site plan, proposed floor plans, proposed plans and elevations; proposed cycle storey and bin store plans; and 3D massing views. The application has been supported by a planning, design and access statement, and Phase 1 Land Contamination Assessment (including Appendix).

9. APPRAISAL

Principle of Development

- 9.1 The site is situated within the built up area of Sittingbourne and comprises a brownfield site with existing residential use and therefore the principle of residential development is acceptable. The site is in an appropriate and sustainable location with good access to local facilities, transport links and schools, where good use should be made of available land. Furthermore, it is also important for Members to note that the Council are currently unable to demonstrate a 5-year housing land supply. As a result of this, I am of the view that the benefits of addressing this shortfall, upon a site within an existing built up area boundary should be given additional weight.

Visual Impact

- 9.2 The existing area is characterised predominantly by residential dwellings which include detached and semi-detached and are mainly two storeys in height. The dwellings fronting onto London Road vary in terms of scale, design, form and finish. Dwellings to the west and north of the site are of a similar Edwardian style to the existing dwelling with pitched gable roofs and a projecting gable element on the front elevations, but there is variety in terms of materials and finish, including external brickwork and some properties have a rendered finish or painted external walls. The dwelling to the east of the site is a two storey dwelling of a simple design with a pitched gable end roof and finished in brickwork. There is increasing variety in the scale and form of dwellings to the north-east and further east of the site along London Road, including single storey dwellings.
- 9.3 The site backs onto the gardens of residential dwellings, which front onto Adelaide Drive to the east of the site. Adelaide Drive is characterised by semi-detached and detached two storey dwellings of a similar scale finished in a mix of facing brickwork, render, hanging tiles with plain tiled roofs.
- 9.4 Approximately 120m to the west of the site there is some commercial buildings including a petrol station which fronts onto London Road, and Wickes which is set back from the highway. There is also a modern development of flats fronting onto London Road (at 153 London Road) which are 3-4 storeys, with a 4 storey element with accommodation in the gabled roofspace on the corner of London Road and the vehicular access road to Wickes. This flat development is of a contemporary design, finished in light coloured facing brick at ground floor level, with white render for the remainder of external walls, and incorporates external balconies on the front elevation.
- 9.5 The proposal seeks the demolition of the existing building and would be replaced by a larger building. With regard to the existing house, the Conservation and Design Manager has commented that the existing house which is of Edwardian style, is not a good example of such due to the loss of its original windows, roof coverings and front boundary treatment. It is further noted that the other properties in the same group of houses between the application site and Cryalls Lane to the west are also of very limited architectural and/or historic value, and date more or less from the same period.

As such it is considered that there is no objection regarding the demolition of the existing dwelling.

- 9.6 As noted, the proposed building in the front of the site would be larger than the existing dwelling and would occupy the width of the plot with an underpass to allow vehicular access into the site. The overall bulk and scale of the building would be broken up through the use of a staggered building line along the front elevation and the variation in the ridge height and roof form. The main ridge height of the building would be the same height as the neighbouring property at no. 127 London Road, and would also have a higher ridge height on the projecting gable element which would be 0.8m higher than the main ridge height. The proposal would be three storeys, with the second floor accommodation set within the roof-space via a modest pitched gable dormer on the front/rear elevation, and within the eaves of the projecting gable element which limits the overall scale and height of the building. As such, it is considered the massing and form of the proposed building is acceptable in this location and would not appear unduly prominent within the street-scene context.
- 9.7 In terms of detailing of the proposed front building it is considered that it is a contemporary design which would complement the existing street-scene which as set out above is varied. The proposal includes elements such as gabled roof, pitched gable dormers, and balconies which are evident elsewhere within London Road and the proposed mix of materials would not appear at odds within the varied street-scene. Details of materials will be sought via condition to ensure the materials are of an appropriate quality and finish.
- 9.8 The proposal would maintain the existing separation distance with no. 127 London Road, and there would be a 6m gap between the proposal and the other neighbouring dwelling to the east namely no 119 London Road, as such it is considered there is sufficient visual separation between the proposed building and neighbouring properties, and it is considered that the proposed building would not appear cramped or over-developed.
- 9.9 With regard to the proposed building at the rear of the site, this would not be easily visible within the street-scene context of London Road, and would only be visible in gaps between existing buildings on London Road or Adelaide Drive. As such it would not be a prominent building in terms of the character and appearance of the area. The proposed building would be of a smaller scale and form than the front building, being two storeys with a lower ridge and eaves height and shallower roof form. The detailing and general appearance would be similar to the building at the front of the site which would maintain a consistent design approach within the development.
- 9.10 In terms of hard and soft landscaping, a car parking courtyard area would be situated in between the two buildings with small areas of amenity space adjacent to the two buildings. The access road and car parking spaces would be finished in a permeable surface, details of which will be controlled via condition. Soft planting is proposed in the amenity space areas and with the provision of native tree planting along the rear site boundary and along the boundaries of the car parking area which would help soften the level of built form and result in a suitable mix of built form, hardstanding and green spaces within the site. To ensure a suitable mix of species for the proposed trees or other plants details of landscaping will be sought via condition.

- 9.11 Taking into account the above, it is considered that the proposed development would not cause any harm to the character or appearance of the area. It is considered that the overall scale and form of the proposed buildings are acceptable, and the site at 125 London Road is of a sufficient size to accommodate two buildings without resulting in a cramped or over-developed form of development.

Residential Amenity

Front building

- 9.12 The proposed building at the front of the site would be adjacent to neighbouring properties at 127 London Road, 119 London Road and the garden of 85 Adelaide Drive which wraps around the side of the boundary for 119 London Road up until the footpath along London Road itself.
- 9.13 No. 127 London Road is immediately adjacent to the proposed front building, and has a rearward two storey part of the building which is a similar depth to the rearward two storey element of the existing dwelling. In terms of separation distance the proposed building would maintain the same distance as the existing dwelling, however the rear wall of the proposed building closest to the boundary would be stepped back by approximately 5m (in comparison to the existing two storey rearward part of the building), and the rearward projection accommodating the stairs would be set 6.8m from the side building line of no. 127 London Road. As such, whilst the proposed building is taller in height along this shared boundary, the reduction in depth (in comparison to the existing built form) and increased distance between the rear projecting elements will ensure that the neighbour will maintain an acceptable level of residential amenity in terms of light and outlook. The windows on the side elevation of the building at the front of the site will be obscured glazed to ensure the privacy of the neighbouring property is maintained. These windows will be conditioned to be obscure glazed and non-opening below 1.7m from the internal floor level to ensure a suitable level of privacy is maintained.
- 9.14 Nos. 119 London Road and 85 Adelaide Drive are located to the east of the proposed front building, there would be a separation distance of approximately 5.6m to the flank elevation of no. 119 London Road which has no windows on that elevation, and a separation distance of 12.4m to the rear of 85 Adelaide Drive (building to building measurements). No windows are proposed on the side elevation of the proposal above ground floor level which would be screened by 1.8m close boarded fencing. Taking into the separation distances and lower height of this part of the building it is not considered that the proposal would result in any significant harm to the residential amenities of these neighbours in terms of light, outlook or privacy.
- 9.15 There have been concerns raised by neighbouring properties on the opposite side of London Road that the proposal would result in a loss of privacy from higher windows and balconies. There is a separation distance of approximately 25-28m between the proposed front elevation of the building (including balconies) and the neighbouring dwellings on the opposite side of London Road. Taking into account this separation distance it is not considered that this would result in a significantly harmful impact in terms loss of privacy or overlooking.

Rear building

- 9.16 The proposed building in the rear part of the site would be adjacent to neighbouring properties at 127 London Road and nos. 73, 75, 77 and 79 Adelaide Drive.
- 9.17 The proposed rear building would be adjacent to the rear garden of no. 127 London Road. There would be separation distance of approximately 24m between the proposal and the rear wall of this neighbouring property. Taking into account this separation distance and relative building lines it is not considered that the proposal would cause significant harm to the habitable rooms in this neighbouring dwelling or the immediate amenity space to the rear of the dwelling. The proposal includes side windows facing the garden of no. 127 London Road which are shown to be obscure glazed to prevent overlooking to this neighbour. These windows will be conditioned to be obscure glazed and non-opening below 1.7m from the internal floor level to ensure a suitable level of privacy is maintained.
- 9.18 Nos. 73, 75, 77 and 79 Adelaide Drive are located to the east of the proposal where the side east boundary of the proposal site adjoins the rear garden boundary of these neighbours. The exception is no. 73 Adelaide Drive which has an L shaped garden which wraps around to adjoin the rear boundary of 125 London Road. The proposed building is set approximately 3.8m from the east side boundary, although the proposed external staircase would adjoin the common side boundary. In terms of proximity to neighbouring properties there is a distance of approximately 22m – 26m from the side wall of the proposed building and the rear walls of these neighbouring properties. The distance is also approximately 18m – 22m between the external staircase element and the rear walls of these neighbouring properties. In terms of outlook it is considered that whilst the proposal is two storey it has been designed in way to limit impact upon neighbouring dwellings including a shallow pitch roof which leans away from neighbouring properties, and that there is a sufficient depth to ensure it is not overly dominant to the neighbouring dwellings to the east. In terms of loss of light and overshadowing the proposal would result in some overshadowing to the rear part of the gardens of these properties of Adelaide Drive, but due to the separation distance it is not considered that the proposals would cause a significant loss of light or overshadowing to the habitable rooms or immediate amenity space of these dwellings and as such it is not considered to result in a significant harmful impact that would warrant refusal.
- 9.19 In terms of impact upon privacy to these neighbours the entrance doors to these flats would be situated on the side elevation and an external staircase is proposed to access the flats at first floor level. The external staircase would be enclosed to the sides (minimum of 1.8m from the finished floor level) to ensure that no overlooking would occur from the use of the staircase or from the entrance doors to the flats. As such it is considered that a suitable level of privacy will remain and the enclosed staircase structure will be conditioned.
- 9.20 As noted above, the garden of no. 73 Adelaide Drive is L shaped and wraps around to adjoin the rear boundary of no. 125 London Road. The proposed building includes rear windows which would face this garden area. The plans show that there would be 1.8m close boarded fence along this boundary and tree planting within the site along this rear boundary, however there would be views available from upper floor windows into the rearmost part of this garden. The windows however are in a position to ensure that they would not overlook the habitable rooms or immediate amenity space of no. 73 Adelaide

Drive, and therefore it is considered that this neighbouring dwelling will maintain a sufficient level of privacy.

- 9.21 There have been concerns raised by neighbouring properties regarding potential noise and disturbance from the vehicular parking and vehicles coming and going from the site. The site would utilise the existing vehicular access and the parking area would be screened by 1.8m close boarded fencing either side with the provision of tree planting along the eastern and western site boundaries. It is acknowledged that there would be some level of disturbance to neighbouring properties, but taking into account the number of dwellings proposed and the sites location within a built up area it is not considered that the level of noise or disturbance would result in a significant harmful impact to neighbouring properties that would warrant refusal of the application.
- 9.22 Taking account the above it is considered that the proposed development does not give rise to unacceptable harm to residential amenities of neighbouring properties.
- 9.23 With regard to the future amenity of occupiers it is considered that future occupiers would have a suitable level of amenity in terms of light, outlook and privacy. The floorspace sizes for the proposed dwellings are considered acceptable with all the rooms meeting the minimum national space standards for 1 bedroom and 2 bedroom flats. In terms of amenity space the provision of external amenity space varies throughout the development. The ground floor flats (nos. 1, 2, 7 and 8) would have small areas of external amenity space adjacent to the flats. The upper floor flats (nos. 3, 4, 5 and 6) within the front building would have external/inset balconies as their provision of amenity space, and the upper floor flats in the rear building would not have a provision of amenity space. Whilst the level of provision is small, it is considered that the scheme would provide a suitable level of amenity for these flats which are mainly one bedroom flats, with a single two bedroom flat situated within a built up urban area.
- 9.24 The Environmental Protection Team Leader has requested a pre-commencement condition seeking details to demonstrate that noise levels for future occupiers will meet adopted standards. As such, it is considered that the future amenity of occupiers in terms of noise will be able to be controlled via the condition which the agent has agreed to. Therefore it is considered that the future occupiers will have a suitable level of amenity.

Highways

- 9.25 The site would utilise an existing vehicular access off London Road, which has been widened to 5m to allow two cars to pass each other at the site entrance. In terms of visibility there is a 2x2m pedestrian visibility splay at the front of the site as the building is set back from the highway and the boundary treatment at the front of the site is at a low height (between 0.75m and 0.9m). It is considered that there is suitable space within the site to allow cars to enter and exit the site in a forward gear. As such it is considered that the site has a suitable vehicular access and KCC Highways have raised no objection regarding the access and level of visibility available.
- 9.26 The KCC Residential Parking standards (Kent Design Guide Parking: Interim Guidance Note 3) outlines that there should be one car parking space per 1 or 2 bedroom flats for this built up location. The proposal provides 1 car parking space per flat which is considered to accord with the adopted parking standards. The proposal also provides

secure cycle storage, with the provision of cycle parking space per flat. It is considered there are sufficient car parking spaces within the development to serve the development and as such I do not consider it would be likely to increase parking pressure on surrounding roads such as Adelaide Drive.

- 9.27 As set out above, KCC Highways have raised no objection to the proposed development subject to conditions including a construction management plan, provision and permanent retention of vehicle spaces, turning facilities, cycle parking facilities. These conditions will be included as part of the planning permission if approved.
- 9.28 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 and that based upon the above assessment the impact of the development upon highway amenity and safety is acceptable.

Other Matters

- 9.29 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 London Road Medical Centre. The consultation response is noted, however the development is for a net gain of 9 residential dwellings and therefore does not meet the threshold for S.106 developer financial contributions which is applicable from 10 or more dwellings.
- 9.30 Policy DM8 of the adopted Local Plan deals with affordable housing and sets out that in Sittingbourne, there is a requirement (on schemes of 11 dwellings or more) for 10% of the total units to be affordable. As the application is for a net gain of 9 dwellings it would not meet this threshold and as such there is no requirement for affordable housing.
- 9.31 Paragraph 174 of the NPPF 2018 advises that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. Given the existing residential use of the site within a built up urban area and clearance of the garden prior to submitting the application it is not considered that detailed ecological surveys were required for the application. However, the proposal includes tree planting within the site which will provide an ecological benefit in addition to benefits gained in terms of visual amenity. Furthermore details of a scheme of biodiversity enhancements including the provision of bat and bird boxes will be sought via condition to enhance biodiversity within the site. Details of landscaping will be controlled by condition to ensure an appropriate mix of native species planting for the site.
- 9.32 KCC Flood and Water Management note that no drainage strategy has been provided regarding how surface water is to be managed, however are satisfied that a detailed design can be submitted via a pre-commencement condition which the agent has agreed to. As such, KCC Drainage raises 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.
- 9.33 A number of pre-commencement conditions have been requested by external consultees including the Environment Agency, KCC Flood and Water, KCC Highways

and Mid Kent Environmental Health. These pre-commencement conditions have been agreed by the agent in an email dated 22/10/2019.

SPA Payment

- 9.34 As Members will be aware, the Council seeks developer contributions on any application which proposes additional residential development within 6km of the Special Protection Area (SPA). The application site is within 6km of the SPA, and as such the Council seeks a mitigation contribution of £245.56 for each new dwelling. The proposal will result in a net gain of 9 dwellings which will result in a financial contribution of £2210.04. The agent has set out that they are willing to agree to pay the contribution once development commences on site. As such the contribution will be secured by either a s106 agreement or unilateral undertaking, rather than an up-front financial contribution. An appropriate assessment is included later in the report.

Sustainable Design and Construction

- 9.35 Members will note condition (12) below. I have asked the applicant to provide a statement setting out how the development will incorporate measures to address sustainable design and construction. Such a statement has subsequently been submitted setting out the strategy for reducing energy use and associated carbon emissions through the design of the scheme in follows a three step approach; *1. Reducing the energy demand through passive design strategies and provision of a high quality building envelope; 2. Reducing the energy consumption through best practice design of building services, lighting and control; and 3. Installation of on-site low and zero carbon technologies.* This statement outlines the provision of solar photovoltaic panels installed on the roofs to generate renewable electricity for the site; and the provision of electric vehicle charging points.
- 9.36 Further information was received demonstrating the proposal includes the provision of one electric charging point per dwelling, which will be secured by condition 31 below. The proposed elevations have been amended to show the provision of Photovoltaic solar panels on the rear (south-western) elevation of the front building and on the rear (south-western) elevation including within the roof valley on the rear building. The provision is approximately 25sqm. The agent notes that there is the possibility of providing additional Photovoltaic solar panels on the east elevation of the building, however this would need to be assessed by a specialist to determine whether the roof angle and orientation would make the provision of solar panels viable.
- 9.37 The Council's Climate Change Officer has confirmed that the submitted energy statement and details regarding the number of electric vehicle charging points and Photovoltaic solar panels is suitable.

10. CONCLUSION

- 10.1 Overall I give very significant weight to the sustainable location of the site within the built area boundary. The adopted Local Plan directs development towards these areas, and the site will utilise an existing brownfield site. I am of the view that the design and layout of the dwellings has been well considered and will not result in any harm to the character or appearance of London Road. I believe that the layout and scale of the dwellings will not give rise to an unacceptable impact upon residential amenities and via

the inclusion of conditions in relation to construction management and hours that this will limit any harm to an acceptable degree.

- 10.2 On the basis of the above, I consider that planning permission should be granted for this development, subject to the conditions listed below.

11. RECOMMENDATION

GRANT Subject to securing the appropriate SAMMS payment of £2210.04 and to the following conditions:

CONDITIONS to include

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

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

2. The development hereby approved shall be carried out in accordance with the following drawings:

Site Location Plan, drawing no. 1479/1 Rev A
Proposed Site Plan, drawing no. 1479/2 Rev C
Proposed Floor Plans, drawing no. 1479/3
Proposed Plans and Elevations, drawing no. 1479/4 Rev B
Cycle Store, Fences and Bin Store Plans, drawing no. 1479-5

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

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

Reason: In the interest of visual amenity.

4. Development shall not begin in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

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

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

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior

to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

5. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

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

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

1. A preliminary risk assessment which has identified:
 - a. all previous uses;
 - b. potential contaminants associated with those uses;
 - c. a conceptual model of the site indicating sources, pathways and receptors; and
 - d. potentially unacceptable risks arising from contamination at the site.

Please note: The submitted Ecologia PRA report fulfils this requirement.

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

Please note: If no significant risk is identified no further works would be required.

3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

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

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

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

Reason: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 170 of the National Planning Policy Framework.

8. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

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

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

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

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

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

11. No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:-

Monday to Friday 0900-1700hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity

12. No development beyond the construction of foundations shall take place until details (which shall include the provision of solar panels in broadly the positions shown on drawing 1479/4 Rev B) have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar

thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details (which shall include the provision of solar panels in broadly the positions shown on drawing 1479/4 Rev B) shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

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

13. No development beyond the construction of foundations shall take place until details have been submitted to and approved in writing by the Local Planning Authority demonstrating how the development will meet the principles of 'Secure by Design'. The development shall then be completed strictly in accordance with the approved details.

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

14. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

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

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

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

16. Prior to the commencement of any above ground works, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. These shall include the installation of bat and bird nesting boxes along with provision of native planting where possible. The approved details will be implemented and thereafter retained. The provision and installation of enhancements should take place within 6 months of the commencement of works, where appropriate.

Reason: To enhance biodiversity

17. Submission of a Construction Management Plan before the commencement of any development on site to include the following:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities
- (e) Temporary traffic management / signage

Reason: In the interests of residential amenity and road safety.

18. No development beyond the construction of foundations shall take place until details of measures to prevent the discharge of surface water onto the highway have been submitted to and approved in writing by the Local Planning Authority. The development shall then be completed strictly in accordance with the approved details.

Reason: In the interests of highway safety.

19. The area shown on drawing no. 1479/2 Rev C as car parking, vehicle loading/unloading, turning space and cycle parking spaces shall be provided before any of the dwellings are occupied and shall be retained for the use of the occupiers of, and visitors to the dwellings, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to the reserved parking spaces.

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

20. The visibility splays shown on drawing no. 1479/2 Rev C shall be provided prior to the first occupation of the dwellings hereby approved and maintained at all times and any obstruction exceeding a height of 0.6 metres above the level of the nearest part of the carriageway within the visibility splays shall be removed. A bound surface shall be used for the first 5 metres of the access from the edge of the highway.

Reason: To ensure provision of the visibility splays and in the interests of highway safety.

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

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

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

Reason: In the interests of residential amenity.

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

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

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

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

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

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

26. Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back garden and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter.

Reason: In the interests of the amenity of occupiers.

27. Before the first occupation of the dwellings hereby permitted on flats 1, 2, 3, 7, 8, 9 and 10 the window(s) at ground floor level and first floor level on the north western elevation (as shown on drawing nos. 1479/3, 1479/4 Rev B) shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3, and these windows shall be incapable of being opened except for a high level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such.

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

28. The privacy screen to the external balcony on flat 4 on the north west elevation (as shown on drawing nos. 1479/3, 1479/4 Rev B) shall be fitted with glass that has been obscured in the manufacturing process to Pilkington level 3 or higher (or equivalent level) and implemented before the development is first occupied and retained permanently thereafter.

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

29. The privacy screen to the external staircase serving flats 9 and 10 (as shown on drawing nos. 1479/3, 1479/4 Rev B) shall be a minimum of 1.8m high from the finished floor level

and shall be implemented before the development is first occupied and retained permanently thereafter.

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

30. The amenity area shown on the approved plans shall be retained in perpetuity for use by the residents of all the flats.

Reason: In the interests of residential amenity.

31. Each dwelling shall be provided with 1 electric vehicle charging point (in accordance with details that shall first have been agreed in writing by the Local Planning Authority) and no dwelling shall be occupied until the charging point for that dwelling has been installed.

Reason: To encourage the use of electric vehicles, in the interests of climate change and reducing pollution.

INFORMATIVES

Southern Water:

1. A formal application for connection to the public sewerage system is required in order to service this development. Please read Southern Waters New Connections Services Charging Arrangements documents which has now been published and is available to read on the website via the following link <https://beta.southernwater.co.uk/infrastructure-charges>.

KCC Highways:

2. It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

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

Environment Agency:

3. Piling can result in risks to groundwater quality by mobilising contamination when boring through different bedrock layers and creating preferential pathways. Thus it should be demonstrated that any proposed piling will not result in contamination of groundwater.

If Piling is proposed, a Piling Risk Assessment must be submitted, written in accordance with Environment Agency guidance document “Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention. National Groundwater & Contaminated Land Centre report NC/99/73”.

The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project formally agreed with the EA
- some naturally occurring clean material can be transferred directly between sites.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. The Environment Agency recommends that developers should refer to:

- the Position statement on the Definition of Waste: Development Industry Code of Practice and;
- The Environmental regulations page on GOV.UK

Environmental Protection Team Leader:

4. Asbestos containing materials may be present at the site. The agent/applicant should ensure that these materials are dismantled and disposed of in the appropriate manner to a licensed disposal site. Further information regarding safety issues can be obtained from the H.S.E.

The Council's approach to the 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.

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

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

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

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

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).

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.

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.

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.

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).

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.

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.

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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2.2 REFERENCE NO - 19/502769/FULL		
APPLICATION PROPOSAL		
Construction of an irrigation reservoir, with associated operational development and landscape enhancements.		
ADDRESS Culnells Farm School Lane Iwade Sittingbourne Kent ME9 8QJ		
RECOMMENDATION Approval		
SUMMARY OF REASONS FOR RECOMMENDATION		
There is a demonstrated agricultural need for the proposed irrigation reservoir and therefore the principle of development is acceptable. The proposal would not give rise to harm in terms of visual amenity, highways amenity, flood risk, residential amenity or biodiversity.		
REASON FOR REFERRAL TO COMMITTEE		
Iwade Parish Council Objection		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Iwade	APPLICANT AC Goatham & Son AGENT Bloomfields
DECISION DUE DATE 30/08/19	PUBLICITY EXPIRY DATE 15/08/19	

Planning History

19/502115/ENVSCR

EIA Screening Opinion for Construction of an Irrigation Reservoir to Store Water for Agricultural Irrigation

Decision Date: 14.05.2019

1. DESCRIPTION OF SITE

- 1.1 The site is located to the west and south of School Lane, situated within the open countryside. The site comprises an existing field in agricultural use, which is roughly rectangular in shape. The Site itself is predominantly grass with hedge and tree boundary planting to the north and west, a wooded block to the east and the reservoir, a ditch and a more open boundary to the south.
- 1.2 As noted above to the south of the site there is an existing reservoir which is used for agricultural purposes. Also to the south of the site is an agricultural field and beyond this is a group of buildings at Culnells Farm. To the south-east of the site are two dwellings, nos. 1 and 2 Culnells Farm Cottages. To the east is School Lane which is a designated Rural Lane with agricultural fields on the other side of the road. To the north of the site is an agricultural fields, with nos. 1-4 Moat Farm Cottages fronting onto School Lane. To the west of the site are agricultural fields and to the north-west is a brickearth extraction site.
- 1.3 The existing levels of the Site are at their lowest to the south at approximately 17m AOD with a flat area to the centre of the field and then rising up in the north of the field to approximately 22m AOD.

- 1.4 The development would be located approximately one kilometre from the Medway Special Protection Area (SPA)

2. PROPOSAL

- 2.1 The proposal seeks the construction of an irrigation reservoir for agricultural purposes, with associated operational development and landscaping.
- 2.2 The proposed irrigation reservoir would be used to provide additional water storage for the top fruit production at Culnells and Howt Green Farms. These farms cover an area of 113.4 hectares and are currently being planted with four different varieties of apples and one variety of pear. The end user is AC Goatham and Son which is a large provider of top fruit in Kent and the UK.
- 2.3 The proposed reservoir will be roughly rectangular in shape and will extend to approximately 205 metres in length and 55 metres in width at its widest points. The embankment surrounding the reservoir extends to approximately 11 metres in width to the south, 21 metres in width to the east, 34 metres in width to the west with a larger contoured area of in-fill to the north.
- 2.4 The embankments will be between 7 and 8 metres high from the reservoir base, with 2 to 3 metres being raised above existing ground level. The reservoir will have a maximum working depth of 7.15 metres. The reservoir will cover approximately 1.12 hectares of open water and is roughly less than half the size of the existing reservoir that serves Howt Green Farm.
- 2.5 The proposed irrigation reservoir would connect to the existing reservoir at Howt Green Farm which covers some 3.3ha. The proposed reservoir is to assist in providing sufficient irrigation water for the additional land, and new/replanted orchards at Culnells and Howt Green Farms, ensuring that any shortage or fluctuation of rainfall can be balanced out by the irrigation supply.
- 2.6 The reservoir will be cut into the ground surrounded by an earth embankment approximately 2 to 3 metres above existing ground level.
- 2.7 The reservoir will be excavated and constructed around a compacted clay core enclosed by an earth embankment providing a total water storage capacity of 56,500m³, of which 22,340m³ is above existing ground level and 34,160m³ is below existing ground level. The excavated layer of top soil is to be stripped off and stored and reused for the completion of the embankment. A core trench will be cut around the embankment centre line and filled with compacted clay. As works progresses, this will increase in height in compacted layers to approximately 1 metres above the capacity water level. The internal slopes will be constructed using secondary clay and overburden. Top-soil will be spread over the external faces of the embankments and the top of the embankment and seeded with grass to provide maximum stability.
- 2.8 In terms of access the proposal will not require a different or separate access to those that exist and serves the land at Culnells Farm and Howt Green Farm. The application has been supported by a Construction Management Plan which sets out different options for the access route of HGVs during the construction phase and for the construction parking area. KCC Highways have outlined that the preferred option for construction traffic is option 2 which uses internal access routes through Howt Green

Farm which is located off Sheppey Way, and for the construction parking area to be located via the main access into Howt Green Farm off Sheppey Way. Internal access tracks will be used to access and maintain the reservoir upon completion.

3. SUMMARY INFORMATION

	Proposed
Site Area (ha)	5.31 ha
Approximate Length(m)	205 metres
Approximate Width (m)	55 metres
Embankment height above ground level	2-3 metres
Reservoir working depth	7.15 metres

4. PLANNING CONSTRAINTS

- 4.1 Potential Archaeological Importance
- 4.2 Countryside location
- 4.3 School Lane is a designated Rural Lane

5. POLICY AND CONSIDERATIONS

- 5.1 The National Planning Policy Framework (NPPF): Paragraphs 7, 8, 11 (sustainable development); 80 and 83 (building a strong economy, including prosperous rural economy), 102 (transport); 127 and 130 (achieving well designed places); 163 (flood risk), 165 (sustainable drainage systems) 170 (local and natural environment); 175 (biodiversity), 206 (mineral safeguarding) are relevant to this proposal.
- 5.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 - (ST1 (Delivering sustainable development in Swale), ST3 (The Swale settlement strategy), CP1 (Building a strong, competitive economy), CP4 (Requiring good design), CP7 (Conserving and enhancing the natural environment), DM3 (The rural economy), DM6 (Managing transport demand and impact), DM7 (Vehicle parking), DM14 (General development criteria), DM21 (Water, flooding and drainage), DM24 (Conserving and enhancing valued landscapes), DM26 (Rural lanes), DM28 (Protecting biodiversity), DM31 (Agricultural land)
- 5.3 DM7 of the Kent Minerals and Waste Local Plan 2013-30: Policy DM7 (Safeguarding Mineral Resources).

6. LOCAL REPRESENTATIONS

- 6.1 None Received

7. CONSULTATIONS

7.1 Iwade Parish Council Object (23/09/2019) on the following grounds:

- Concerns over flooding of Iwade Stream.

There has been correspondence with Iwade Parish Council through the course of the application which is set out below;

11/07/2019 – Iwade Parish Council Comments

- Concerns regarding the impact of another reservoir place in this area as it will ultimately feed into the Iwade Stream; adding to the Weinerberger feed, the existing reservoir feed and that from housing further down.
- Iwade stream floods (although at times it may look quite insignificant); the latest event being May 2018 when fourteen homes were flooded and damaged. As a result of this the National Flood Forum, headed by Katia Sanhueza-Pino, Flood Project Officer (South East), has been holding meetings with those affected, the Parish Council and multi agencies, including the Environment Agency, KCC (John Kelly, Max Tant, and Earl Bournier), Southern Water and Swale Borough Council (Victoria Hadfield, Mike Knowles and Della Fackrell); a walk-through of the stream by the multi agencies is planned for the end of this month
- Request that KCC's formal flood defence consent be sought and that a detailed CCTV survey be undertaken as suggested (in KCC consultation dated 09/07/2019) prior to any planning consent.

12/09/2019 – Iwade Parish Council Comments

- Disappointed to see the responses from KCC and the Environment Agency
- The Environment Agency only mention pollution; there was no reference to flooding concerns and the impact the extra water will have on the Iwade Stream.
- Iwade Parish Council queried the consultation response made by KCC Flood and Water (dated 09/07/2019) which outlined the potential need for formal flood consent. For clarity KCC Flood and Water provided the following response which was passed to Iwade Parish Council in an email dated 16/09/2019; *"The original application did not provide a lot of information about the operation of the reservoir, consequently our response covered a number of possible issues. Since then, we have been able to discuss with the applicant how the reservoir is intended to be filled and operated in more detail. They confirmed in their letter the intention to fill in a controlled manner by pumping from the existing reservoir, there is no new direct abstraction from the watercourse and the water is only used to satisfy irrigation demand. In most circumstance it would not discharge any water into the watercourse."*

Following these clarifications, we consider the proposal is a low risk in terms of any potential for increase in flood risk elsewhere, so we have not requested that the applicant undertake any assessments of the watercourse downstream. We have requested a verification report as a planning condition, the operation and maintenance requirements must be detailed in full when discharging this condition.

As the applicant is not making any changes to the watercourse, land drainage consent (also known as flood defence consent) is not required, as this only applies to construction activities within the banks or channel of the watercourse itself. It does not concern flow rates or volumes etc. which are discussed as part of the planning application. The paragraph referring to this in our original response is a standard paragraph that we often include to make applicants aware that this is required, which we now know is not in this

instance. Should land drainage consent be required, it is granted as part of a separate legal process to planning approval, the approval of a planning application does not provide land drainage consent and our response to a planning application would not indicate this (though it may highlight the need to apply for this, as our original response did)."

23/09/2019 – Iwade Parish Council maintain their objection;

- Even though KCC Drainage maintain the risk is low, the same comment has been made in the past and from experience with Iwade Stream even a 'low risk' is not acceptable due to the flooding the village has had to suffer in the past. The Parish Council does still object to this application if at some time water from the reservoir is permitted to enter the stream.

7.2 Environment Agency raise no objection (22/08/2019)

22/08/2019: The Environment Agency have reviewed the details and raise no objection to the proposal. After confirmation from the applicant the EA find the plans acceptable and the pollution prevention measures are appropriate.

Officer Note: Please note the Environment Agency have only provided comments regarding pollution prevention measures, and issues relating to flooding and drainage fall outside their remit and would be considered by KCC as the Local Lead Flood Authority, (as set out in para 7.4 below).

7.3 Natural England raise no objection (21/08/2019)

05/07/2019: As submitted, the application could have potential significant effects on the Medway Estuary and Marshes Ramsar Site and Special Protection Area (SPA). Natural England requested further information in the form of an assessment of the potential suitability of the site to support non-breeding birds which are an interest feature of the designated sites noted above.

21/08/2019: based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection. Additional information provided on 31 July 2019 concerning winter bird use of the proposed farm reservoir site indicates that it is unlikely that the development site it utilised by interest feature bird species of nearby designated sites, therefore is unlikely to be considered functionally linked land.

7.4 KCC Flood and Water raise no objection subject to conditions (14/08/2019)

27/06/2019: KCC Flood and Water outlined that the proposed works did not fall under the remit of Kent County Council as Lead Local Flood Authority. They outlined that 'The works proposed apply to a reservoir as defined under the Reservoirs Act 1975 and consultation should be undertaken with the Environment Agency.'

Officer Note: Following the receipt of this consultation response there was correspondence between the planning agent and KCC Flood and Water regarding whether the proposal was covered by the 1975 Reservoir Act (and therefore the Environment Agency). As set out in KCC's consultation response for 19/502115/ENVSCR (Environmental Screening Opinion) for the proposal it was clarified

that it would not fall under the 1975 Reservoir Act as the proposal was below the above existing ground level threshold storage size of 25,000 m³ and therefore would not require the Environment Agency approval. The proposal is for a reservoir with a total capacity of 56,500 m³ of which 22,340 m³ would be above existing ground level and therefore does not meet the threshold of the 1975 Reservoir Act. As such further comments were sought from KCC Flood and Water.

09/07/2019: “KCC Flood and Water comment that in principle, they are satisfied with the drainage strategy for the proposed reservoir where surface water overflow will be discharged to greenfield runoff for all critical events.

At the detailed design stage, we would also expect to see the drainage system modelled using FeH rainfall data in any appropriate modelling or simulation software. Where FeH data is not available, 26.25mm should be manually input for the M5-60 value, as per the requirements of our latest drainage and planning policy statement (June 2017).

As this proposal will be increasing the volume of surface water to the existing ordinary watercourse, we need to be sure that it is in a condition to take this additional volume. A CCTV survey could be undertaken at detailed design stage.”

They included a note stating; “Any feature capable of conveying water can be considered to fall under the definition of an ‘ordinary watercourse’ and we would urge the applicant to contact us prior to undertaking any works that may affect any watercourse/ditch/stream or any other feature which has a drainage or water conveyance function. Any works that have the potential to affect the watercourse or ditch’s ability to convey water will require our formal flood defence consent (including culvert removal, access culverts and outfall structures). Please contact flood@kent.gov.uk for further information.” (**Officer Note: see updated position from KCC in para 7.1)**

KCC Flood and Water therefore raised no objection to the proposal subject to conditions seeking 1) a detailed surface water drainage scheme prior to the commencement of development, and 2) a verification report regarding the approved surface water drainage scheme prior to occupation/use of the development.

14/08/2019: The agent submitted further information regarding a drainage strategy (letter dated 25/07/2019). KCC outlined that they are satisfied with the drainage strategy, and are satisfied sufficient information has been supplied at this stage. As such KCC raise no objection to the application subject to the inclusion of condition two, and remove the first condition proposed in their consultation response dated 09/07/2019.

7.5 KCC Highways raise no objection subject to conditions (08/07/2019)

08/07/2019: KCC Highways reviewed the submitted Construction Management Plan and note there are a couple of points that require further clarification as set out below (points 1 and 2). KCC Highways raise no objection to the application subject to the inclusion of conditions regarding the route of HGVs during the construction phase to be via the preferred option 2 (Through Howt Green Farm off Sheppey Way), and for the construction parking area to be located via the main access into Howt Green Farm off Sheppey Way.

1) It would appear that two options are being presented for the routing of HGVs during the construction phase and although it is noted that these movements are to be limited to the delivery and collection of machinery and materials, we would favour a route that takes these movements as much off the highway as possible, i.e. through Howt Green Farm. This should consequently be designated by way of condition as the preferred option 2.

2) The parking area for contractors during the construction phase up until its incorporation into the contoured area would appear to propose the use of an existing access off School Lane, to the north of the proposed reservoir. In our view this access would not be suitable for the increase in vehicle movements that would be generated by these proposals and we would favour ensuring again by way of condition that these vehicles are routed via the main access into the farm.

17/06/2019: KCC Highways requested a detailed Construction Management Plan

7.6 KCC Ecology raise no objection (22/07/2019) subject to conditions

01/07/2019: Requested further information regarding Great Crested Newts (GCN) “as GCN is a protected species, there is a requirement to either carry out the proposed works under the traditional European Protected Species (EPS) Licencing or as part of the District Level Licencing (DLL). We require clarification of what approach is proposed to be implemented prior to determination. As such:

- If the District Level Licencing is proposed, we advise a copy of the certificate from Natural England confirming that the scheme has been accepted.
- If the traditional EPS Licencing is proposed, we advise this is secured as a condition using the information detailed in section 4.4 of the ecology report.”

With regard to reptiles, KCC Ecology raise no objection subject to a condition seeking compliance with the ecological mitigation measures outlined within the submitted Preliminary Ecological Appraisal, Reptile Survey and Mitigation Strategy (KB Ecology March 2019). KCC Ecology requested the inclusion of an informative regarding breeding birds.

22/07/2019: The agent provided additional information regarding GCN outlining that the District Level Licencing is proposed and included a certificate outlining that the scheme can be accepted within the District licensing scheme. KCC Ecology reviewed the submitted information and considered this addressed their request regarding GCN and outlined no further information was required.

7.7 KCC Minerals and Waste raise no objection (24/09/2019)

24/09/2019: “We have reviewed the borehole evidence, which we consider to have sufficient spread across the proposed site to be representative. The data shows that the deposit is substantially contaminated with sands and flints and is clay in nature. Brickearth is mineralogically very similar to clay in nature and thus the first 0.4m of some of the boreholes may well be recording a Brickearth deposit. However, experience has shown that the local mineral operators do not regard this type of deposit useable. Furthermore, the depth of any potential deposit is shown to be limited. Therefore, based on the information available it can be concluded that given the contamination and limited

depth, the mineral is unlikely to be economic and therefore criterion 1 of Policy DM7 of the KMWLP can be invoked. The County Council as Minerals and Waste Planning Authority therefore has no objection on the basis of the new information.”

- 7.8 **Southern Water raise no objection (10/06/2019)**, and their comments are included as an informative

- 7.9 **Rural Planning raise no objection (11/06/2019)**

Comment: ‘The applicants are large-scale local fruit growers, and packers of their own fruit, and other farmers’ fruit, with their operational base at Hoo St Werburgh, where at Flanders Farm they have constructed a large fruit processing and storage facility with associated parking and hardstandings etc, initially permitted in outline in 2011.

The applicants are now understood to own or rent a total of 26 farms, mainly in the Medway and Swale areas, but also further afield in Kent, farming a total of over 900 ha overall. Culnells Farm (about 41 ha) was partially acquired, partially rented in 2017, and is farmed together with the nearby Howt Green Farm (about 73 ha).

Howt Green Farm has an existing reservoir covering some 3.3 ha and it is now proposed to add a further (connected) reservoir nearby covering some 1.1 ha, and about 7m deep. This is to assist in providing sufficient irrigation water for the additional land, and new/replanted orchards.

It is normally considered that important environmental and agricultural benefits are obtained from the provision of adequate winter storage capacity on fruit farms, for crops that are highly demanding of adequate irrigation water for summer cropping. The size of the reservoir proposed does not appear excessive in relation to the area of orchards that it would serve. I conclude that the development is necessary for the purposes of agriculture here.’

- 7.10 **Lower Medway Internal Drainage Board** were consulted on the application, but have made no comments.

8. BACKGROUND PAPERS AND PLANS

- 8.1 The application has been supported by a site location plan; existing block plan, proposed block plan’ proposed elevations; proposed site sections; proposed contour plan; proposed drainage plan and inflow construction details; proposed dimensioning plan and landscape masterplan. The application has been supported by a preliminary ecology appraisal, reptile survey and mitigation; flood risk assessment; landscape and visual impact assessment; planning statement, construction management plan; planning statement; a letter regarding non-breeding birds and supporting minerals statement.

9. APPRAISAL

Principle of Development

- 9.1 Paragraph 83 of the NPPF supports a prosperous rural economy and notes that decisions should enable “a) *the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; and b) the development and diversification of agricultural and other land-based rural businesses;...*”. Policy DM3 of the Swale Borough Local Plan, supports the

rural economy including development in the agricultural sector. The policy states that planning permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area.

- 9.2 Policy DM3 sets out that all proposals shall ‘result in no significant harm to the historical, architectural, biodiversity, landscape or rural character of the area’ (1.e) and shall ‘avoid scales of traffic generation incompatible with the rural character of the area, having regard to Policy DM6 and Policy DM26’ (1.f). The policy has further criterion for agricultural/forestry sectors set out in part 3 of the policy;

- a. enable the diversification of a farm; or*
- b. extend the growing season or improve the reliability and availability of local crops; or*
- c. provide for the storage, distribution or added value activities in central hubs located close to crop sources and the primary and secondary road networks; or*
- d. increase the availability of locally grown food sold direct to the consumer; or*

With regard to the criteria set out above, it is considered that the proposal would meet parts 3.b and 3.d. The proposed development will ensure that there is sufficient water in place to provide a reliable source of irrigation water to the orchards, this in turn optimises the growing season and efficiency of the local crops.

- 9.3 The applicants are large-scale local fruit growers, and packers of their own fruit and other farmers fruit at an operational fruit processing and storage facility based at Hoo St Werburgh. The proposed irrigation reservoir would be used to provide additional water storage for the top fruit production at Culnells and Howt Green Farms (approx. 114 hectares), including new and replanted top fruit orchards. The Councils Rural Agricultural Advisor has been consulted regarding the agricultural ‘need’ for the proposed reservoir and noted that *“It is normally considered that important environmental and agricultural benefits are obtained from the provision of adequate winter storage capacity on fruit farms, for crops that are highly demanding of adequate irrigation water for summer cropping. The size of the reservoir proposed does not appear excessive in relation to the area of orchards that it would serve.”* The Council’s Rural Agricultural Advisor concluded that the proposed development is necessary for the purposes of agriculture here.

- 9.4 Therefore taking into account the above, it is considered that the principle of development for an agricultural irrigation reservoir is acceptable.

- 9.5 The impact upon the landscape, rural character of the area, highways, biodiversity, drainage/flood risk and residential amenities will be assessed below.

Visual Impact and Landscape

- 9.6 The site has a clear rural and agricultural character comprising an existing agricultural field and is surrounded by agricultural fields, an existing irrigation reservoir, an area of woodland and sporadic buildings to the north/south/east which maintain the rural and agricultural character of the area. The site itself has screening enclosure to the east in the form of a woodland block between the site and School Lane, to the north and west there is existing hedge and tree planting along the field boundaries and immediately to the south is the existing reservoir. Members will note that the application site is not designated on account of landscape quality; to the west and north, on the western side

of Iwade Road, between the road and the Medway estuary, land is designated as an Area of High Landscape Value (Swale Level).

- 9.7 The proposed reservoir is roughly rectangular in shape, with grass embankments to the east, west and south. A larger area of contouring from the excavated material is proposed to the north, this area comprises gradual land contours and new earthworks to blend in to the new reservoir embankment and the existing surrounding landscaping. This area to the north will be re-laid with agricultural quality soil re-laid ready for future proposed crops.
- 9.8 A Landscape and Visual Impact Assessment has been undertaken and has been used to inform any necessary mitigation planting or landscaping to soften the impact of the development, and ensure there is no unacceptable harm to the landscape character. The submitted Landscape Masterplan sets out that native hedge and tree planting is proposed along the north and west field boundaries to strengthen the existing planting; native hedge and tree planting is proposed on the eastern boundary between the site and School Lane to strengthen the existing woodland planting. To the southern boundary a new alder shelter belt is proposed.
- 9.9 The Landscape and Visual Impact Assessment sets out that in terms of the visual impact of the development, the zone of theoretical visibility would be contained to an area only a couple of hundred metres to the north and south, with many of the views from the north being obscured or partial. The views from the east and west would be limited due to the proposal sites containment within the densely planted field boundaries. Upon completion and establishment of the proposed enhancement planting this zone of theoretical visibility would be further significantly reduced, with most views of the proposal limited to within the developments field boundaries.
- 9.10 As set out within the Landscape and Visual Impact Assessment there would be a moderately adverse landscape impact during the construction phase, though once the reservoir and enhancement planting has been implemented the potential landscape character impact has been judged to be minor to moderate adverse. The assessment outlines that once the planting is established and the reservoir is in use the landscape character impact is judged to be minor beneficial.
- 9.11 School Lane is a designated Rural Lane which is situated to the east and north of the site. The closest part of the proposed reservoir to the rural lane is along the eastern boundary where there is existing woodland between the site and the highway, which is proposed to be strengthened by additional native landscaping. There is a significant gap between the reservoir and the northern part of School Lane with landscaping and agricultural fields situated between the site and highway. As such it is considered the proposal would not result in harm to the character of the designated rural lane.
- 9.12 Taking into account the above, it is considered that the proposal would not have a harmful visual impact on the character and appearance of area subject to the proposed additional planting and landscaping which will be sought via condition. A clear agricultural need for the development has been demonstrated and the proposal would maintain the rural and agricultural nature of the site, albeit in a different way to its current form. As such it is considered the proposal is acceptable in terms of visual impact and landscape character.

Highways

- 9.13 With regard to the impact on the highway network, the proposed development would not require a new access. The application has been supported by a Construction Management Plan which set out different options for the access route of HGVs/construction traffic during the construction phase and for the construction parking area.
- 9.14 KCC Highways and Transportation have reviewed the submitted information and have concluded that the preferred option for construction traffic is to utilise existing internal access routes through Howt Green Farm, and for the construction parking area to be located via the existing main access into Howt Green Farm, both of which use an existing access off Sheppey Way. KCC Highways and Transportation have outlined that this will limit the extent of movements on the public highway, and that alternative construction parking area situated off School Lane would not be suitable. As such, KCC Highways and Transportation raise no objection to the proposed development subject to conditions controlling the route for construction traffic and construction parking area which is outlined in condition (8).
- 9.15 Once the development is complete, internal access track through the farm will be used to access and maintain the reservoir and therefore is not considered to have a harmful affect on the highway network. Therefore taking this into account and provision for traffic movements to pass through Howt Green Farm will ensure there will be less impact upon the local road network. It is therefore considered that the proposed development will be acceptable in traffic terms and satisfy Local Plan policy DM6.

Drainage and Flood Risk

- 9.16 Due to the scale of development, the application has been supported by a Flood Risk Assessment including a Drainage and Surface Water Drainage Strategy (SuDs), policy DM21 of the Local Plan is relevant. The application site falls within the Environment Agency Flood Zone 1 which is a 'Low Probability' area regarding flood risk. The flood risk vulnerability classification for this type of development in this location is considered as 'Water Compatible' development which is acceptable in Flood Zone 1.
- 9.17 Iwade Parish Council have raised concerns regarding the increased risk of flooding to Iwade from the impact of an additional reservoir, as it has the potential to feed into the Iwade Stream; adding to the Weinerberger feed, the existing reservoir feed and that from housing further down. Iwade Parish Council has noted that the Iwade stream flooded in May 2018.
- 9.18 Consultation has been sought from both the Environment Agency and KCC Flood and Water regarding flood risk and drainage. As set out within the consultation response section (para 7.2), the Environment Agency's comments are limited to pollution prevention measures, as issues relating to flooding and drainage fall outside their remit and therefore would be considered by KCC as the Local Lead Flood Authority. As such, the comments from KCC Flood and Water are pertinent and are discussed below.
- 9.19 The initial comments (09/07/2019) dated from KCC Flood and Water outlined that they were satisfied with the drainage strategy and therefore raised no objection subject to conditions seeking 1) a detailed surface water drainage scheme prior to the commencement of development, and 2) a verification report regarding the approved

surface water drainage scheme prior to occupation/use of the development. Further information was provided by the agent with regard to the drainage strategy and KCC Flood and Water provided an updated consultation response outlining that this information was sufficient to satisfy their requested condition, and therefore raised no objection subject to the verification report which is outlined in condition (3).

- 9.20 Further to concerns from Iwade Parish Council, clarification was sought from KCC Flood and Water regarding potential flood risk. They provided a comprehensive response which is included below; *“The original application did not provide a lot of information about the operation of the reservoir, consequently our response covered a number of possible issues. Since then, we have been able to discuss with the applicant how the reservoir is intended to be filled and operated in more detail. They confirmed in their letter the intention to fill in a controlled manner by pumping from the existing reservoir, there is no new direct abstraction from the watercourse and the water is only used to satisfy irrigation demand. In most circumstance it would not discharge any water into the watercourse.*

Following these clarifications, we consider the proposal is a low risk in terms of any potential for increase in flood risk elsewhere, so we have not requested that the applicant undertake any assessments of the watercourse downstream. We have requested a verification report as a planning condition, the operation and maintenance requirements must be detailed in full when discharging this condition.

As the applicant is not making any changes to the watercourse, land drainage consent (also known as flood defence consent) is not required, as this only applies to construction activities within the banks or channel of the watercourse itself. It does not concern flow rates or volumes etc. which are discussed as part of the planning application. The paragraph referring to this in our original response is a standard paragraph that we often include to make applicants aware that this is required, which we now know is not in this instance. Should land drainage consent be required, it is granted as part of a separate legal process to planning approval, the approval of a planning application does not provide land drainage consent and our response to a planning application would not indicate this (though it may highlight the need to apply for this, as our original response did).

- 9.21 In conclusion, the proposed development is considered to be low risk in terms of any potential for increase in flood risk elsewhere, and is an appropriate form of development within Flood Zone 1. KCC Flood and Water as the Local Lead Flood Authority have raised no objection to the proposed development in terms of flood risk and have outlined that the submitted drainage measures are suitable subject to a condition which is set out above. As such, it is considered the proposal is acceptable in terms of flood risk and drainage.

Residential Amenity

- 9.22 The nearest residential dwellings to the proposed reservoir at 1 and 2 Culnells Farm Cottages located approximately 200m to the south-east of the proposal and nos. 1-4 Moat Farm Cottages which are located approximately 290m to the north of the proposal. Taking into account the significant distance between the proposed development and these residential dwellings and the nature of the development, the proposal is considered to respect the residential amenities of these neighbouring dwellings.

Biodiversity

- 9.23 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. Local Plan Policy DM28 outlines that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 9.24 The application was supported by 'Preliminary Ecological Appraisal, Reptile Survey and Mitigation Strategy'. The submitted report outlined that great crested newts are likely to be present on site, and that also found the presence of reptiles within the vicinity of the site. With regard to the great crested newts (GCN), KCC Ecology requested clarification regarding whether the required mitigation would be carried out under the traditional European Protected Species (EPS) Licencing or as part of the District Level Licencing (DLL). The agent provided additional information regarding GCN outlining that the District Level Licencing is proposed and included a provisional certificate outlining that the scheme can be accepted within the District licensing scheme. KCC Ecology reviewed the submitted information and considered this addressed their request regarding GCN and outlined no further information was required.
- 9.25 With regard to reptiles on site, KCC Ecology are satisfied with the mitigation measures outlined in the report and therefore raise no objection subject to a condition seeking compliance with the ecological mitigation measures, which is set out in condition (6). KCC Ecology have also requested the inclusion of an informative regarding breeding birds which has been included.

Minerals

- 9.26 The Kent Minerals and Waste Local Plan 2013-2030 shows that part of the site lies within an area of potential Brickearth deposits. Policy DM7 (Safeguarding Mineral Resources) of the Kent Minerals and Waste Local Plan 2013-2030 sets out the criteria which will need to be satisfied in order for planning permission to be granted for non mineral development that is incompatible with minerals safeguarding. The application has been supported by a Minerals Assessment which has been assessed by the KCC Minerals and Waste officer. The supporting assessment outlines that the deposit is substantially contaminated with sands and flints, and local mineral operators do not regard this type of deposit useable, furthermore the depth of the any potential deposits has been shown to be limited. Therefore, based on the information available it can be concluded that given the contamination and limited depth, the mineral is unlikely to be economic and therefore criterion 1 of Policy DM7 of the KMWLP can be invoked. The County Council as Minerals and Waste Planning Authority therefore has no objection on the basis of the new information. As such, I consider believe that criterion 1 of DM7 (the mineral is not of economic value or does not exist) has been satisfied.

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

- 9.27 This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Medway and The Swale

Special Protection Areas (SPAs) which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

- 9.28 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.
- 9.29 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.
- 9.30 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)
- 9.31 As part of the consultation process, Natural England requested further information in the form of an assessment of the potential suitability of the site to support non-breeding birds which are an interest feature of the designated sites (Medway Estuary and Marshes Ramsar Site and Special Protection Area (SPA)).
- 9.32 Further information regarding non-breeding birds was submitted concerning winter bird use of the proposed farm reservoir site and indicates that it is unlikely that the development site is utilised by interest feature bird species of nearby designated sites, therefore is unlikely to be considered functionally linked land. As such, Natural England has advised that the proposed development will not have significant adverse impacts on designated sites and that a likely significant effect can be ruled out, and therefore raises no objection
- 9.33 Furthermore, as the proposal does not seek any form of residential development there is no requirement for a SAMMS contribution in this instance.

10. CONCLUSION

- 10.1 Having considered the proposal on its own merits and against planning policies set out in NPPF and the Local Plan, I am of the view that this proposal can be considered as development necessary to assist in the viability and vitality of agricultural and rural business whereby it should be supported and complies with Policy DM 3 of the Local Plan. Subject to the proposed additional planting and landscaping it is considered the proposal would not have a harmful visual impact on the character and appearance of

area. As set out in the assessment above it is not considered that the proposed development would give rise to harm in terms of highways amenity, residential amenity, or biodiversity (indeed the additional native species planting has the potential to enhance biodiversity at the site).

10.2 The proposed development is considered to be low risk in terms of any potential for increase in flood risk elsewhere, and is an appropriate form of development within Flood Zone 1. KCC Flood and Water as the Local Lead Flood Authority have raised no objection to the proposed development in terms of flood risk and have outlined that the submitted drainage measures are suitable. As such, it is considered the proposal is acceptable in terms of flood risk and drainage.

10.3 Taking all material planning consideration into account, I consider the proposal to be acceptable and therefore recommend that planning permission be granted subject to conditions.

11. RECOMMENDATION

GRANT Subject to the following conditions

CONDITIONS to include

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

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

2. No development shall take place other than in accordance with the details shown on the following drawings;

Site Location Plan, drawing no. JPR02-4-1-001 Rev B
 General Arrangement Plan, drawing no. JPR02-4-1-002 Rev A
 Proposed Contour Plan, drawing no. JPR02-4-1-003 Rev A
 Dimensioning Plan, drawing no. JPR02-4-1-004 Rev A
 Drainage Plan, drawing no. JPR02-4-1-005 Rev A
 Proposed Site Sections, drawing nos. JPR02-4-3-001 Rev A; JPR02-4-3-002 Rev A;
 JPR02-4-3-003 Rev A; JPR02-4-3-004 Rev A
 Embankment Construction Details (North East South), drawing no. JPR02-4-5-001 Rev A

Embankment East and Overflow Construction, drawing no. JPR02-4-5-002 Rev B
 Inflow Construction Details, drawing no. JPR02-4-5-003 Rev B
 Landscape Masterplan

Reasons: For the avoidance of doubt and in the interest of visual amenity.

3. The development hereby permitted shall not be occupied (or the use commenced) until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the

submission of an operation and maintenance manual for the sustainable drainage scheme as constructed

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

4. Notwithstanding the details on 'Landscape Masterplan', prior to first occupation of any part of the development full details of soft landscaping works shall be submitted to the Local Planning Authority for approval. 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. Upon approval the agreed landscaping scheme shall be implemented within the next available planting season.

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

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

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

6. All ecological mitigation measures and/or works shall be carried out in accordance with the details contained within 4.4 of the Preliminary Ecological Appraisal, Reptile Survey and Mitigation Strategy (KB Ecology March 2019). Any changes to the ecological mitigation measures need to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of reptile habitat and biodiversity

7. The development must accord with the site survey and sectional drawings showing site level details and proposed site levels of the reservoir and associated development. No other alterations to levels, other than those indicated on these approved plans, shall take place within the site without the prior written approval of the Local Planning Authority.

Reason: In the interest of visual amenity.

8. The routing of construction and delivery vehicles to/from the site shall be in accordance with para 3.4 and figure 2 as set out within the Construction Management Plan (dated June 2019) and the parking and turning areas for construction and delivery vehicles and site personnel including wheel washing facilities shall be in accordance with the area shown on figure 5 as set out within the Construction Management Plan (dated June 2019). Any changes to these arrangements need to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and convenience.

INFORMATIVES

Southern Water:

The exact position of the public water main must be determined on site by the applicant before the layout of the proposed development is finalised. (Please refer to consultation response dated 10/06/2019 for a plan).

All existing infrastructure, including protective coatings and cathodic protection, should be protected during the course of construction works. No excavation, mounding or tree planting should be carried out within 6 metres of the public water main without consent from Southern Water.

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

The application details for this development indicate that the proposed means of surface water drainage for the site is via a watercourse. The Council's technical staff and the relevant authority for land drainage consent should comment on the adequacy of the proposals to discharge surface water to the local watercourse.

For further advice, please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119), www.southernwater.co.uk or by email at developerservices@southernwater.co.uk.

KCC Ecology:

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

KCC Highways

It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of

this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at

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

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

The Council's approach to the application

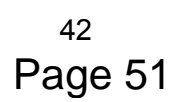
In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where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

In this instance:

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

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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2.3 REFERENCE NO - 19/500866/OUT

APPLICATION PROPOSAL			
Outline application for a residential development of up to 9 dwellings and open space, including associated access (vehicular/cycle/pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development. (Access being sought).			
ADDRESS Land At Swale Way Great Easthall Way Sittingbourne Kent ME10 3TF			
RECOMMENDATION Approval, subject to conditions and to SAMMS payments			
SUMMARY OF REASONS FOR RECOMMENDATION			
Development site falls within the settlement confines of Sittingbourne where the principle of residential development is acceptable.			
REASON FOR REFERRAL TO COMMITTEE			
Call in from Cllr Hall			
WARD Murston		PARISH/TOWN COUNCIL	APPLICANT Mr Chris Hall AGENT Vincent And Gorbing
DECISION DUE DATE		PUBLICITY EXPIRY DATE	
29/04/19		20.11.2019	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/505280/OUT	Outline Application for residential development (up to 33 dwellings), and open space; including associated access (vehicular / cycle / pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.	Allowed on Appeal APP/V2255/W/17/3170533	01.03.2017
15/510505/FULL	Construction of a new community center and associated landscape works	Approved	03.08.2019
Outline Application SW/12/0260	Erection of detached, semi-detached and terraced dwellings and associated garages, layout parking and amenity areas, estate roads, footpaths and landscaping	Approved	25.04.2014
Associated Reserved Matters			
15/510149/REM	All reserved matters sought	Approved	03.06.2016
Outline Application SW/02/1180	Residential development, employment development, open space and supporting facilities	Approved	16.07.2004
Associated Reserved			

Matters			
SW/04/1551	Access	Approved	04.02.2005
SW/05/0930	Layout	Approved	12.10.2005
SW/05/1297	External Appearance, Access, Siting and Design	Approved	03.01.2006
SW/06/0051	Landscaping	Approved	23.03.2006
SW/07/0426	Industrial – layout, scale, appearance and Access	Approved	10.07.2007
SW/07/0431	Neighbourhood Centre	Approved	12.07.2007

1. HISTORY

- 1.1 The subject site forms part of the larger development site of East Hall Farm which was granted Outline consent in 2004, Reference SW/02/1180 for '*Residential development, employment development, open space and supporting facilities*' -granted 16th July 2004.' This was followed by the submission of eight reserved matters, summarised within the planning history above.
- 1.2 In August 20016 a Full Planning Application (ref: 15/510505/FULL) was submitted that relates to the same parcel of land as the subject site located within the broader development site of East Hall Farm but occupying only the southern side. The subject site of this application is contained to the northern side of this same parcel of land. The application was for the '*Construction of a new community center and associated landscape works*'. The community center 'Lakeview Village Hall' is now opened to the public.
- 1.3 A subsequent application is also relevant. This relate to the parcel of land directly to the east of the site. This was for an Outline Application (Ref: 16/505280/OUT) for *Residential development (up to 33 dwellings), and open space; including associated access (vehicular / cycle / pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development*. The application was Appealed on the grounds of non-determination and was subsequently allowed and planning permission granted by the Planning Inspectorate (Ref: APP/V2255/W/17/3170533).

2. DESCRIPTION OF SITE

- 2.1 The site lies to the south of the roundabout at the eastern end of Swale Way close to its junction with Great Easthall Way and Eurolink V. The site forms an irregular shaped parcel of land with an area of approximately 0.36 hectares which is currently void of development.
- 2.2 The existing access to the village hall from Great Easthall Way runs along part of the western boundary of the site. There is an existing landscaped bund and tree planting on the Swale Way and Great East Hall Way frontage of the site. Apart from the landscape bound, ground levels within the site is generally flat. There is a medium pressure gas pipeline that runs through the site and a 6 metre wide easement passing across the site access and the Lakeview Village Community Hall
- 2.3 Contained within the same parcel of land but to the south is the recently constructed Lakeview Village Community Hall, including associated car park and games court/enclosed grass area, which is set within a landscaped site.

- 2.4 To the south of this is a continuation of Great Hall Way with recent residential development beyond.
- 2.5 There is no other vehicular access into the Great Easthall Estate apart from a bus route which provides access to Oak Road in Murston for buses and pedestrians only. Eurolink IV, a large site comprising of a number of commercial/industrial buildings, lies to the north of the application site. Eurolink V (further commercial/industrial development) is situated on the land to the northeast, on the opposite side of Swale Way to the application site. Sittingbourne Golf Course lies 600m metres to the northeast of the site with agricultural fields stretching to the north (where they meet The Swale) and to the east towards Teynham.

3. PROPOSAL

- 3.1 This is an outline planning application for which all detailed matters are reserved with the exception of the access to the site which is shown on the plans. The access would be taken from Great Easthall Way and would not alter the existing access that has already been constructed on site.
- 3.2 The access would be provided via an existing access road in the form of a short spur off of a mini-roundabout on Great Easthall Way. This current serves the Lakeview Village Hall where access is currently obstructed due to an existing barrier. It is located near the roundabout junction with Swale Way that forms part of the Sittingbourne Northern Relief Road.
- 3.3 An indicative layout has been provided which annotates the provision of seven (7) dwellings, two car parking spaces and associated landscaping. Given that this application is for access only, all other details would be reserved.

4. PLANNING CONSTRAINTS

- 4.1 As set out above, the medium-pressure gas pipeline runs through the southern part of the site.

5. POLICY AND CONSIDERATIONS

- 5.1 National Planning Policy Framework (NPPF): Paras 8 (three dimensions of sustainable development); 10, 11 (presumption in favour of sustainable development); 47 (Determining applications); 54, 55, 56, 57 (planning conditions and obligations); 61 (delivering sufficient supply of homes); 124, 127, 128, 130, 131 (good design).
- 5.2 National Planning Practice Guidance (NPPG): Design.
- 5.3 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes 2014-2031); 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); DM7 (Vehicle parking); DM14 (General development criteria); DM19 (Sustainable design and construction); DM21 (Water, flooding and drainage).

6. LOCAL REPRESENTATIONS

6.1 One letter of representation has been received. A summary of the comments is as follows:

- The local community was promised local amenities, this has so far yet to materialise.
- I object to more houses until we have a local shops and other businesses in the area.
- We were also promised a second exit to the site which has failed to happen along with the relief roads.
- Concern raised in relation to highway congestion and impact upon existing infrastructure.
- Insufficient consultation

7. CONSULTATIONS

7.1 KCC highways and Transport:

Thank you for your consultation in relation to the above outline planning application for access only. I note that the submitted Transport Statement meets the previously agreed scope and addresses each of the points raised in our pre-application advice to the agent. The Statement establishes that the number of vehicular movements from the proposed dwellings on this site will not constitute an increase over the previously approved healthcare usage, under planning application ref. SW/02/1180. Given this comparison and recognizing the scale of the proposed development, which has now even been reduced under this application, I am satisfied that it does not represent a significant impact to the local highway network. Access to the site has also been demonstrated to be safe and accommodating of all likely vehicle types. Sufficient measures have also been proposed to safeguard the parking amenity of the existing village hall.

Provision for dedicated pedestrian/cycle access has also been considered within the Statement, to allow for a more direct route to Swale Way, as indicated in Drawing No. 122 of Appendix D. Section 4.2.2 agrees that details are to be provided at reserved matters. As this relates to site access, I am of the view that this application should be accompanied by a preliminary design for the link, supported by a Stage 1 Road Safety Audit so that this element may be agreed.

Officer comments: A Stage 1 Road Safety Audit was requested

KCC Comments: (following receipt of Stage 1 Road Safety Audit):

The proposals, subject to detailed design at a later stage under a S278 agreement.

We would not wish to offer any objection to the planning application as it now stands.

7.2 Environmental Services; Senior Scientific Officer:

Noise

I have reviewed the acoustic report submitted with this application (Resound Acoustics dated February 2019). I am satisfied that the findings of the report demonstrate that this application for 9 residential dwellings is acceptable in principle, subject to appropriate mitigation measures and noting the close proximity of busy roads and industrial sites. As the report was based on indicative layout only, I recommend that any outline planning approval be subject to the following condition, requiring a further noise assessment based actual proposed layout and including site specific mitigation measures to achieve the desirable indoor and outdoor noise levels. □

- Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back garden and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter.

Air Quality

I have reviewed the Air Quality Assessment submitted with this application and am satisfied with its conclusions.

Land Contamination

The submitted Peter Brett Ground Condition Assessment report dated October 2018 is satisfactory and demonstrates qualitatively that this application is acceptable in principle. I therefore recommend the following condition in order that this can be followed up quantitatively:

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

- 1) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

I also recommend the following condition, in the interests of the residential amenity of the area during construction works:

Code of construction Practice

Prior to the commencement of the development a Code of Construction Practice shall be

submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and

Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003).unless previously agreed in writing by the Local Planning Authority.

The code shall include:

- An indicative programme for carrying out the works
- Measures to minimise the production of dust on the site(s)
- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works
- The arrangements for public consultation and liaison during the construction works

7.3 **Natural England**

Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance.

Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound. 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).

Notwithstanding this, Natural England's advice is that this proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the [European Site's conservation objectives](#) and in accordance with the Conservation of Habitats & Species Regulations 2017.

This is because Natural England notes that the recent [People Over Wind Ruling](#) by the Court of Justice of the European Union concluded that, when interpreting article 6(3) of the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The ruling also concluded that such measures can, however, be considered during an appropriate assessment to determine whether a plan or project will have an adverse effect on the integrity of the European site. Your Authority should have regard to this and may wish to seek its own legal advice to fully understand the implications of this ruling in this context.

Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of this ruling. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Natural England has not assessed this application for impacts on protected species. Natural England has published [Standing Advice](#) which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

- 7.4 KCC have requested developer contributions. However – the Council's adopted SPD sets out that such contributions are not required for developments of below ten dwellings.

8. APPRASIAL

Principle of Development

- 8.1 The application site lies within the built confines of Sittingbourne where residential development is accepted in principle. Sittingbourne is the most sustainable location in the settlement hierarchy as set out in the Local Plan (2017). Sittingbourne has a range of local facilities including shops, public house and doctor's surgery with good transport links to other parts of the borough and beyond. It is a sustainable location and as such it is considered to be suitable for residential in the adopted Local Plan subject to consideration of other material considerations submitted at a later stage under reserved matters.

Access

- 8.2 All matters are reserved for future determination with the exception of access.
- 8.3 The main vehicle access point is proposed via the existing main access road which leads onto Great Easthall Way (Hall Road). Separate site access is proposed to the east of the existing mini roundabout serving the Lakeview Village Hall. A barrier currently obstructs the sites access, however the applicant has demonstrated full ownership of this section of land and has full rights for its removal.
- 8.4 The internal road layout has been designed to take account of the highway authority's pre-application advice in particular the carriageway width (5.5m) and the need for a turning head that can accommodate a refuse vehicle. However, this will be subject to detailed design, and further discussions with the highway authority for determination at a later date as part of a layout reserved matters submission, although the general principles are considered acceptable.
- 8.5 Provision for dedicated pedestrian/cycle access submitted as part of a Stage 1 Road Safety Audit has also been considered acceptable by KCC Highways to allow for a more direct route to Swale Way and therefore acceptable in this regard.
- 8.6 KCC Highways are satisfied that the proposal does not represent a significant impact to the local highway network. Access to the site has also been demonstrated to be safe and accommodating of all likely vehicle types including pedestrians under the Stage 1

Road Safety Audit. Sufficient measures have also been proposed to safeguard the parking amenity of the existing village hall.

Residential Amenity

- 8.7 The indicative floor area of the dwellings is capable of securing an acceptable level of accommodation for future residents in accordance with the National Space Standards – Technical Guidance.
- 8.8 The positioning of the new dwellings as indicated within the indicative block plan demonstrates that the residential accommodation would not result in overbearing or overshadowing impacts upon the adjacent properties. With regard to overlooking and loss of privacy no adverse impacts have been identified. Plots no, 6 and 7 have the closest proximity however a distance of 21m is maintained between properties and therefore acceptable. Furthermore, the outdoor amenity provision whilst at a minimum provision is adequate to meet the needs of future residents.
- 8.9 Notwithstanding, the indicative layout is for the provision of residential 7 units only. I am of the opinion that as detached houses this is likely to be the maximum number of units that could be accommodated without giving rise to potential overlooking issues and lack of amenity provision leading to substandard levels of accommodation. To increase the on site provision to 9 dwellings as proposed an alternative housing mix would need to be considered.

Visual Amenity

- 8.10 The site is currently is an undeveloped overgrown parcel of land with the Lakeview Community Centre and associated games court, car park and access to the south. The site is prominent in views from the Swale Way roundabout to the north and along Great Easthall Way. I note the retention of the existing trees to the north and west of the site which would be encouraged, not only from the point of view of having a positive visual impact, but also in terms of providing screening for the development and the incorporation of some additional plating around the northern and western perimeter to help soften its impact.
- 8.11 The pattern of development in the vicinity of the site is comprised of a mixture of dwelling types and designs, generally ranging between 2 and 3 stories in height and the indicative scheme would be within this range. The development reflects the general character of the surrounding area that comprise of two storey detached and semi-detached properties. There is scope to provide a well detailed development which complements the existing built form.

Landscaping

- 8.12 Turning to landscaping, policy CP4 of the adopted local plan emphasises the retention of existing trees, hedgerows and other features which contributes to the character and quality of the area, whilst encouraging planting of trees and hedgerows as appropriate using native species. Policy DM14 requires the provision of an integrated landscape strategy that would achieve a high standard of landscaping scheme within the development. I note that the submission indicates retention existing trees to be complemented by additional planting which is encouraged to soften the appearance of the development. It is necessary to create a well landscaped amenity area around

each dwelling to help the development assimilate well within its surroundings and to avoid extensive hardstanding areas within the scheme and this should be addressed within the further submission of reserved matters.

Contaminated Land

- 8.13 A contaminated assessment report by Peter Brett Ground Condition Assessment dated October 2018 was submitted with the application and the Senior Scientific Officer is satisfied that the information provided is satisfactory and demonstrates qualitatively that this application is acceptable in principle. Upon the request of the Senior Scientific Officer a number of conditions would be attached to any approval as a matter of safeguarding.

Other matters

- 8.14 The application has received interest in relation to the lack of community provision which was first put forward in 2003 and 2009 under the (Review) Development Briefs for the larger development site of East Hall Farm, however only one formal objection has been received.
- 8.15 Notwithstanding, the lack of community provision was previously addressed under the planning application contained within the parcel of land immediately east of the site. This was for an Outline Application (Ref: 16/505280/OUT) for *Residential development (up to 33 dwellings), and open space; including associated access (vehicular / cycle / pedestrian), alterations to levels, surface water attenuation features (including swales), landscaping and related development.*
- 8.16 The application was granted on appeal by the Planning Inspectorate (Ref: PP/V2255/W/17/3170533). One of the points for consideration was whether the development of the site as a neighbourhood centre, specifically a convenience shop would be commercially viable. The Planning Inspector concluded, *'taking account of all the factors...., I am satisfied having regrading to the evidence in this case, that a neighbourhood centre use, in particular a local convenience store, would be unviable on this site'*.
- 8.17 Furthermore, the Planning Inspector states, *'I empathise with the communities wish to see more facilities on Great Easthall Estate, in particular a convenience store, as originally planned in the 2003 and 2009 (Review) Development Briefs. I acknowledge that such a provision would to an extent promote the social well being of the community, however the Brief recognised that retail uses (and other uses) need to be commercially viable. Based on the evidence before me I have found that this would not be the case'*
- 8.18 As such, I consider that provision of community provision within this location was previously addressed. It was demonstrated that a convenience shop would not be commercially viable and for this reason I concur with the conclusions and recommendations drawn by the Planning Inspector.

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

- 8.19 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).
- 8.20 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.
- 8.21 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.
- 8.22 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.
- 8.23 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).
- 8.24 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.
- 8.25 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.

- 8.26 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.
- 8.27 In the event of an approval, agreement would be required for the applicant to pay the SAMMS contribution.

9. CONCLUSION

- 9.1 The proposal entails development within the built up area boundary which is acceptable as a matter of principle. I consider the indicative layout of 7 units would not give rise to unacceptable impacts to residential or visual amenities. As such I recommend this application is approved.

10. RECOMMENDATION

GRANT Subject to the provision of SAMMS payments and the following conditions:

CONDITIONS to include

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

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

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

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

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

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

- (4) The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking or garaging of cars (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not shall be carried out on such land (other than the erection of a private garage or garages) or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

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

- (5) All hard and soft landscape works submitted and approved pursuant to condition (1) above shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

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

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

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

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

1) A preliminary risk assessment which has identified:

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

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

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

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

Reason: To limit the risks associated with contamination of the site in the interests of future residents

- (8) Prior to the commencement of the development a Code of Construction Practice shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003).unless previously agreed in writing by the Local Planning Authority.

The code shall include:

- An indicative programme for carrying out the works
- Measures to minimise the production of dust on the site(s)
- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works
- The arrangements for public consultation and liaison during the construction works

Reason: In the interests of residential amenity.

- (9) Details of sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations shall have been submitted to, and approved in writing by the Local Planning Authority. Upon approval, the details shall be incorporated into the development as approved.

Reason: In the interest of environmental impact.

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

Reason: In the interests of water conservation and sustainability.

- (11) No construction activities shall take place, other than between 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours Saturday with no working activities on Sunday or Bank Holiday.

Reason : In the interests of residential amenity.

INFORMATIVES

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

Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highwayboundary-enquiries>

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

(2) Kent County Council recommends that all developers work with a telecommunication partner or subcontractor in the early stages of planning for any new development to make sure that Next Generation Access Broadband is a fundamental part of the project. Access to superfast broadband should be thought of as an essential utility for all new homes and businesses and given the same importance as water or power in any development design. Please liaise with a telecom provider to decide the appropriate solution for this development and the availability of the nearest connection point to high speed broadband. We understand that major telecommunication providers are now offering Next Generation Access Broadband connections free of charge to the developer. For advice on how to proceed with providing access to superfast broadband please contact broadband@kent.gov.uk

The Council's approach to the application

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

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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2.4 REFERENCE NO - 19/501564/EIFUL		
APPLICATION PROPOSAL <p>Variation of condition 37 of 15/504264/OUT (Outline application (with all matters reserved other than access into the site) for a mixed use development comprising: up to 310 dwellings; 11,875sqm of B1a floorspace; 3,800sqm of B1b floorspace; 2,850sqm of B1c floorspace; a hotel (use class C1)(up to 3,250sqm) of up to 100 bedrooms including an ancillary restaurant; a care home (use class C2)(up to of 3,800sqm) of up to 60 rooms including all associated ancillary floorspace; a local convenience store (use class A1) of 200sqm; 3 gypsy pitches: internal accesses; associated landscaping and open space; areas of play; a noise attenuation bund north of the M2; vehicular and pedestrian accesses from Ashford Road and Brogdale Road; and all other associated infrastructure.) to allow occupation of residential dwellings prior to completion of the off site highways works d) (Brogdale Road Footpath and e) (Brogdale Road/A2 junction).</p>		
ADDRESS Land At Perry Court London Road Faversham Kent ME13 8YA		
RECOMMENDATION – That delegated powers are given to Grant permission for the application under S73 to vary condition 37, subject to completion of a S106 Agreement.		
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL <p>The variation to the trigger point in condition 37 to delay delivery of the Brogdale Road highway improvements would not cause any unacceptable highways impacts or any wider significant environmental effects beyond those approved under outline permission 15/504264/OUT.</p>		
REASON FOR REFERRAL TO COMMITTEE <p>The application is contrary to the views of Faversham Town Council and Ospringe Parish Council.</p>		
WARD Watling	PARISH/TOWN COUNCIL Faversham Town	APPLICANT BDW Kent AGENT
DECISION DUE DATE 27/06/19		PUBLICITY EXPIRY DATE 29/07/19

Planning History

15/504264/OUT - Outline application (with all matters reserved other than access into the site) for a mixed use development comprising: up to 310 dwellings; 11,875sqm of B1a floorspace; 3,800sqm of B1b floorspace; 2,850sqm of B1c floorspace; a hotel (use class C1)(up to 3,250sqm) of up to 100 bedrooms including an ancillary restaurant; a care home (use class C2)(up to of 3,800sqm) of up to 60 rooms including all associated ancillary floorspace; a local convenience store (use class A1) of 200sqm; 3 gypsy pitches: internal accesses; associated landscaping and open space; areas of play; a noise attenuation bund north of the M2; vehicular and pedestrian accesses from Ashford Road and Brogdale Road; and all other associated infrastructure. Approved.
Decision Date: 27.03.2017

17/506603/REM - Approval of reserved matters relating to scale, layout, appearance and landscaping for the erection of 310 dwellings, pursuant to conditions 1, 4, 10 and

24 of outline planning permission 15/504264/OUT. Approval sought for residential part of outline scheme only. Approved. Decision Date: 01.03.2019

18/502735/FULL- Erection of a new supermarket (Use Class A1) and a hotel (Use Class C1) along with associated accesses, car and cycling parking, lighting, drainage, hard and soft landscaping and associated infrastructure – Resolution for planning permission to be granted subject to completion of a S106 Agreement

18/503057/FULL - Erection of a 3 storey, 66 bed care home for older people with associated access, car park and landscaping – Approved 18th October 2019

1. DESCRIPTION OF SITE

- 1.01 The application site measures 33.1 hectares in size, and comprises former agricultural fields, now under construction for development. The site is allocated in the adopted local plan for a mixed use development and benefits from outline planning permission for such development granted under 15/504264 (see planning history). Reserved matters approval has been granted under 17/506603/REM for the residential part of the development, and this is currently under construction. The applicant has recently confirmed that 7 dwellings are now occupied, with contracts exchanged on a further 2 units.
- 1.02 To the north of the application site lies The Abbey School, Perry Court Farm and varying residential properties. To the east, lies Ashford Road and residential dwellings which form a linear pattern along this road from north to south. The southern boundary of the site is defined by the M2 motorway. The site is bound to the west by Brogdale Road and the two residential dwellings, known as ‘Ash Tree Cottages’.
- 1.03 A Grade II listed Oasthouse, which forms part of Perry Court Farm, is located directly north-west of the Site and was built in 1904. Additionally, Orchard Cottages, which are also Grade II listed, are located beyond Ashford Road to the north-east, and a Grade II listed Gazebo located adjacent to the A2 and Ashford Road junction, are within fairly close proximity of the application site. It is also noted that a listed windmill is located to the south of the M2.
- 1.04 The topography of the site falls away from two local highpoints in the south-east and the south-west corners of the site, to a shallow vegetated valley running from the M2 motorway to the centre of the site. The lowest point within the site lies in the north-west corner. The surrounding landform is gently sloping and in general falls slowly through Faversham where it meets and drains into Faversham Creek.
- 1.05 An area of land lying to the south of the site, beyond the M2, is defined as an Area of High Landscape Value. The Kent Downs Area of Outstanding Natural Beauty is located less than half a mile to the south-west of the application site – beyond the M2.

2. PROPOSAL

- 2.01 This application has been made under S73 of the Town and Country Planning Act to vary condition 37 of the existing outline planning permission. As the development is now occupied, the application is retrospective.
- 2.02 The current wording of condition 37 states as follows –

The off-site highway works associated with the development are indicated on the

following drawings:

- a) 10182/HL/02 Rev C - Proposed Roundabout Ashford Road*
- b) 10182/HL/03 Rev A - Proposed new Junction onto Brogdale Road*
- c) 10182/HL/02 Rev C - footpath provision to the site frontage along Ashford Road, and provision of a pedestrian crossing*
- d) 10182/HL/06 Rev A - improvement of the Brogdale Road footpath*
- e) 10182/HL/06 Rev A - improvement of the Brogdale Road/A2 junction*

No work shall commence on the development site until off site highway works (a) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority. Off site highway works (b) above shall be constructed in accordance with the phasing plan to be approved pursuant to the Section 106 agreement dated 23 March 2017.

No occupation of the development site shall take place until the off site highway works c), d) and e) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and convenience.

- 2.03 The application seeks specifically to vary the trigger points and delivery of items d) and e), which relate to improvements to Brogdale Road, and to allow some occupation of dwellings prior to such works taking place.

3 PLANNING CONSTRAINTS

The site is allocated for a mixed use development in the Local Plan.

The site is located within the built confines of Faversham.

The oast building to the north is Grade II listed.

The land to the south of the M2 motorway is within an Area of High Landscape Value

Public Right of Way ZF18 crosses through the site

High Pressure and Medium Pressure gas pipelines cross the site

4 POLICY AND CONSIDERATIONS

- 4.01 **The National Planning Policy Framework** – For the purpose of this application, the key paragraphs are 108-111 which relate to highway impacts.
- 4.02 **Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017** – The key policies relating to this application are DM6 (managing transport demand) and MU7 (allocation policy for Perry Court)

5 LOCAL REPRESENTATIONS

- 5.01 13 letters of objection received (Including multiple representations from the same person)

- All highways works should be financed by the developer and completed prior to occupation of any properties
- Excessive traffic on the A2 which will be exacerbated by the Perry Court development
- Impact upon air quality
- A relief road is required, and which should involve re-examination and re-design of Perry Court to facilitate such a road, to reduce congestion / air quality impacts on the A2.
- This will result in an extra 50 vehicle movements in peak hours.
- Impacts arising on traffic congestion and air quality from cumulative developments
- The traffic survey does not provide data on impacts arising to the A2 / Mall junction, the A2 / A251 junction, or junctions 6 and 7 of the M2.
- Footpath provision on Brogdale Road is inadequate, and crossing the A2 is dangerous, and must be improved prior to occupation.
- This would result in a significant increase in traffic on Brogdale Road with resultant congestion, fumes, pollution and dangerous conditions for pedestrians.
- A separate development of 63 dwellings on Brogdale Road will add to congestion and must be considered.
- The developer is seeking to circumvent existing planning conditions
- This will set a precedent for other developers / applications to delay works
- The junction works to Brogdale Road / A2 would not provide any real benefits
- Brogdale Road is not suitable for additional traffic
- Air quality impacts have significantly increased

5.02 The Faversham Society Planning Committee – state that the condition should not be varied as it would set a precedent for development on sites without complying with conditions when the reason for this condition is to ensure that traffic generated by the development does not compromise the amenity of existing residents, in this case those of Brogdale Road. Additional pressure is already likely to arise in the near future from the development of the site on the opposite side of Brogdale Road.

6 CONSULTATIONS

Faversham Town Council

6.01 Strongly object -

- 1) This development has been subject to a lengthy planning process. The condition of completing the offsite highway works before occupation is the outcome of the planning process and the Town Council wishes that condition to be upheld.
- 2) The proposed diversion if the Brogdale Road is closed is not suitable for HGVs or coaches.
- 3) Brogdale Road/A2 junction is presently congested, causing inconvenience for existing residents. The junction could not cope with increased traffic movements from the 75 dwellings without the off site highway works.

Ospringe Parish Council

- 6.02 Object. The parish council has had long standing concerns about the accuracy of the traffic assessments/predictions especially in relation to the A2/Brogdale Road junction. Empirical evidence clearly shows more traffic movements at the junction than the reports suggest. It would be detrimental to both pedestrian and vehicular safety due to traffic movements likely to be generated by 75 dwellings to be allowed before highways works covered by the condition are carried out.

KCC Highways

- 6.03 Advise that the application to vary condition 37 of the outline planning approval granted by 15/504264/OUT has been necessitated following lengthy discussions between the applicant and the Highway Authority, Kent County Council. The outline planning approval secured highway improvement works to Brogdale Road, and this includes the widening of both the carriageway and footways along its length, as well as changes to its junction with the A2. The design and technical specification of the proposed works have been approved by Kent County Council, and the associated S278 Agreement signed in order to allow the developer to carry out these changes to the existing public highway.
- 6.04 In order to physically construct these highway improvements, it will be necessary to implement a road closure for Brogdale Road during the construction period, and implement a lengthy diversion route to maintain access for affected residents and businesses. Following concerns raised locally to our Roadworks Coordination team who issue the permits for temporary road closures and diversions, it was decided that this should not be done until the permanent vehicular route through the Perry Court development to the A251 is available for use.
- 6.05 Consequently, it is necessary to allow some of the approved development to be built out prior to the delivery of the off-site highway works to Brogdale Road, and therefore condition 37 must be varied to facilitate this. To be clear, the application does not remove the developer's obligation to provide the highway improvements, as it merely delays the timing of when they should be constructed. Ultimately, the highway works will still be delivered through the S278 Agreement process, but in a manner that will have less of an impact on the initially considered diversion route and local residents/businesses.
- 6.06 The Transport Note that has been produced to assess the proposed variation of condition demonstrates through junction modelling that the A2/Brogdale Road junction will still operate within capacity with the predicted traffic flows generated by 75 residential units prior to the link through to the A251 being available. It is generally accepted that an RFC of 0.85 is the desirable limit for the capacity of a junction arm before it becomes unstable, and the modelling suggests that an RFC of 0.75 would be reached as a result of this application, which is acceptably below the recognised threshold.
- 6.07 KCC Highways raise no objections to the proposals in respect of highway matters.

Highways England

Original comments

- 6.08 Originally commented that the analysis focuses on the performance of the A2 / and Brogdale Road, that the proposal will not generate any additional trips and whilst distribution of trips may occur this is unlikely to impact upon Brenley Corner. However further information was sought to clarify the potential redistribution of trips caused by the road closure and associated impacts upon the strategic road network.

- 6.09 Following the submission of further information relating to the Brogdale Road closure, Highways England raise no objection to the proposal.
- 6.10 Health and Safety Executive – do not advise on safety grounds against the grant of planning permission.
- 6.11 Natural England – Do not wish to make any comments
- 6.12 KCC Drainage – Do not make any comments on the basis that the variation would not impact upon surface water management.
- 6.13 SBC Environmental Protection Team Leader advises that the proposal would not have any significant effect on air pollution, as the basis facts (regarding the scale of the development and predicted traffic generation) remain as they always have done. Some concern is raised regarding the need to deal with contamination prior to occupation and the effects of construction work on new residents.

7 BACKGROUND PAPERS AND PLANS

- 7.01 The application includes a covering letter to explain the reasons for the application, a Transport Technical Note, the Environmental Statement submitted with application 15/504264, and a letter setting out conformity with the Environmental Impact Assessment Regulations.

8 APPRAISAL

Legal Background

- 8.01 This application is made under S73 of the Town and Country Planning Act to develop land without compliance with a planning condition. S73 states as follows –

“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

- 8.02 Members should note that the determination of a S73 application should only consider the changes to the condition in question, and should not be a complete re-consideration of the application. However to assist with clarity, decision notices for the grant of planning permission under S73 should also repeat relevant conditions from the original planning permission. Members should note that the original outline permission will continue to exist whatever the outcome of this S73 application.

Background

- 8.03 In this instance, the application seeks to vary condition 37 of outline permission 185/504264/OUT which relates to the delivery of off-site highways works. As currently worded, the condition requires off-site works to Brogdale Road prior to the occupation of any part of the development. Members will note that the development is currently in

breach of this condition with up to 9 units in occupation, the implications of which are discussed later in this report.

- 8.04 The works on Ashford Road (parts (a) and (c) of condition 37), consisting of the construction of the new roundabout at the site entrance, and installation of a footpath and pedestrian crossing, have been completed.
- 8.05 The works to Brogdale Road consist of improvements at the A2 junction to create a right turn lane from Brogdale Road, and improvements to the width of the road and pedestrian footpath along the road from the application site to this junction. KCC Highways have confirmed that the design and technical specification for the highways works has been formally agreed.
- 8.06 An application under the Highways Acts was made by the applicant to KCC to close Brogdale Road in early 2019 to carry out these improvement works. However following concerns raised locally regarding the closure and lack of a suitable diversion route, the KCC Roadworks Co-ordination team did not issue a permit for this work. It was subsequently decided that such works should not be carried out until the permanent vehicle route through the Perry Court development to the A251 is available for use, to provide a suitable diversion route.
- 8.07 The application was originally submitted on this basis, i.e that the delivery of the spine road through the site was necessary to meet requirements from the KCC Roadworks co-ordination team, and placed additional constraints on the applicant. However during the course of this application, this position has changed. It is understood that the temporary closure of Brogdale Road is not now dependant on the spine road through the development site being opened, although the spine road is still anticipated to be completed in the summer of 2020.

Highways Impacts

- 8.08 As the Council should only consider the matter of the condition in question, the key issue is whether the occupation of some dwellings within the development would cause any unacceptable highways impacts on Brogdale Road. Policy DM6 of the adopted Local Plan states that significant developments should be accompanied by a Transport Assessment, and include measures to mitigate unacceptable impacts. Policy MU7 (specific to the Perry Court site) states that development proposals should include a Transport Assessment to determine the need and timings for any improvements to the transport network, and that mitigation should include improvements to the A2 / Brogdale Road junction, and pedestrian routes.
- 8.09 The application includes a Transport Technical note which has modelled the effects of the traffic generation from 75 dwellings on Brogdale Road prior to the proposed road improvement works taking place. The technical note concludes that the junction would continue to operate within capacity. KCC Highways accept the modelling work and that the junction would remain below capacity notwithstanding the predicted traffic flows generated by the 75 dwellings. On this basis KCC Highways raise no objection to a variation of the condition to allow some limited occupations. For the avoidance of doubt, members should note that the modelling draws on the Transport assessment submitted with the original application, and which included traffic data arising from other committed developments in the area, including the development of 63 dwellings to the west of Brogdale Road. I also note that Highways England do not raise objection to the scheme in terms of impact upon the strategic road network.
- 8.10 In terms of pedestrian use, a footway would still be available for use on Brogdale Road - albeit of a smaller width than would be the case with the improvements. In addition, alternative pedestrian access via a public footpath exists to the north of the

development site, notably adjacent to the Abbey School, to the A2. As such I do not consider the impact on pedestrians, resulting from the proposal to allow a limited number of occupations prior to completion of the Brogdale Road works, would be unacceptable. Nor do KCC Highways object on such basis.

8.11 Taking the modelling work into account and the lack of objection from KCC Highways, I am content that a variation to condition 37 to allow up to 75 occupations prior to delivery of the Brogdale Road improvements would not cause unacceptable highways impacts or be in conflict with policies DM6 of MU7 of the Local Plan.

8.12 National Planning Policy Guidance provides advice on the use of planning conditions. This makes clear that planning conditions should only be used when they meet specific tests, those being –

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

8.13 In this respect, it is evident that improvements to Brogdale Road are necessary to mitigate against the highways impacts arising from the development as a whole – as evidenced in the original outline application. However the subsequent modelling work submitted with this current application, and the advice from KCC Highways demonstrates that Brogdale Road and the junction with the A2 has capacity to absorb the traffic generated by up to 75 dwellings within the development before the Brogdale Road improvement works are required. On this basis, I consider that the necessity for these works to be completed arises after the occupation of 75 dwellings, and that an amendment to condition 37 to reflect this would meet the above tests.

8.14 I would therefore recommend that that condition 37 is varied to the following –

(37) The off-site highway works associated with the development are indicated on the following drawings:

- a) 10182/HL/02 Rev C - Proposed Roundabout Ashford Road*
- b) 10182/HL/03 Rev A - Proposed new Junction onto Brogdale Road*
- c) 10182/HL/02 Rev C - footpath provision to the site frontage along Ashford Road, and provision of a pedestrian crossing*
- d) 10182/HL/06 Rev A - improvement of the Brogdale Road footpath*
- e) 10182/HL/06 Rev A - improvement of the Brogdale Road/A2 junction*

No work shall commence on the development site until off site highway works (a) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority. Off site highway works (b) above shall

be constructed in accordance with the phasing plan to be approved pursuant to the Section 106 agreement dated 23 March 2017.

No more than 75 dwellings within the development shall be occupied until the off site highway works d) and e) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and convenience.

The existing breach of planning permission

- 8.15 Recent investigations by my officers and subsequent discussions with the developer have revealed that up to 9 dwellings have already been occupied, in breach of the existing planning permission. The developer is aware that they are in breach of the existing permission and has since undertaken not to agree to any further occupations until this current application is resolved. As a result of this undertaking, and because neither KCC or Highways England object to this application (which centres on highways impacts) no formal enforcement action has been taken to date. My recommendation is that a variation to the condition should be approved, and this would “regularise” the existing situation. However if the Planning Committee was to refuse this application, it would need to consider whether formal enforcement action should then be taken – which may involve action against both the developer and occupants of the dwellings.

Other matters

- 8.16 Air Quality – Some third parties have raised concern regarding air quality impacts. The Council’s Environmental Protection Team Leader advises that air quality impacts would not significantly change as a result of the proposal to vary condition 37.
- 8.17 Contamination / Amenity - The Council’s Environmental Protection Team Leader has raised some concerns regarding the effect of contamination and construction activities on occupants. This is already controlled under existing conditions relating to contamination and construction and is not, in my opinion, relevant to this application to vary condition 37.
- 8.18 The need for a relief road – some objectors have referred to such need in their representations. The approved scheme does not include a relief road, and this application should only consider the specific impacts arising from the variation of condition 37, and should not re-consider design / layout matters.

Environmental Impact Assessment (EIA)

- 8.19 The original outline application was subject to an EIA, and the significant effects arising from the development were considered as part of this decision making process. As this is a S73 application, it also technically falls to be considered under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Environmental Statement submitted with the original outline application has been included with this application, and the applicant has provided a letter setting out the likely significance of effects arising from the changes sought to condition 37.
- 8.20 As such changes are related to triggers for localised highways works, it is concluded that this application would not give rise to likely significant effects on the environment above those already identified as part of the consented outline planning permission. I agree with this conclusion and that that the environmental information submitted with this application provides the basis for the Council to reach a reasoned conclusion on the significant effects of the proposed development.

S106 Agreement

- 8.21 As the effect of granting permission is to issue a new decision notice for the development, it will be necessary to ensure that a S106 Agreement is secured to tie the obligations secured under the outline permission (15/504264/OUT) to this new permission.

9. CONCLUSION

- 9.01 I would conclude that the variation to condition 37 in highways terms is acceptable, and that a variation to the condition should be granted, subject to completion of a S106 Agreement to tie the obligations secured under application 15/504264/OUT to the new permission.

10 RECOMMENDATION

That delegated powers are given to GRANT planning permission, subject to completion of a S106 Agreement to tie the obligations secured under 15/504264/OUT to this new permission, and subject to the following conditions

CONDITIONS

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

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

- (2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years from the date of the grant of outline planning permission under application 15/504264/OUT on 27th March 2017.

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

- (3) The development to which this permission relates must be begun not later than the expiration of five years from the date of the grant of the outline planning permission under 15/504264; or two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

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

- (4) The details submitted pursuant to condition (1) above shall show the residential development restricted to the residential areas as identified indicatively on the 'Illustrative Site Layout' Drawing Number: 5187-PL2-02 Revision B.

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

- (5) For each phase of the development hereby approved, no development shall take place within a relevant phase until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures will be taken to ensure that the development in that phase incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development of

the phase of development in question as approved, and retained as such in perpetuity.

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

- (6) No development shall take place until details of a scheme for the long-term monitoring of breeding birds using the site has been submitted to, and approved in writing by, the Local Planning Authority.

Reason: In the interests of monitoring breeding bird populations within the site.

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

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

- (8) Before the first occupation of a dwelling / premises the following works between that dwelling / premises and any adopted highway shall be completed as follows:
 (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
 (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
 (1) highway drainage, including off-site works,
 (2) junction visibility splays,
 (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

- (9) None of the dwellings in a relevant phase hereby approved shall be first occupied until details of measures to ensure that the emergency vehicular access to the approved housing is used only in the event of an emergency have been submitted to and approved in writing by the Local Planning Authority. The agreed measures shall then be implemented in accordance with a programme that shall also have been agreed in writing by the Local Planning Authority. Following implementation, the approved measures shall then be retained in perpetuity.

Reason: In the interests of highway safety and convenience.

- (10) The details submitted pursuant to condition (1) above shall show adequate land reserved for the parking or garaging of cars and such land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is

likely to lead to car parking inconvenient to other road users and detrimental to amenity.

- (11) The details submitted pursuant to condition (1) above shall show adequate land reserved for the parking of vehicles and for the loading and off-loading of commercial vehicles, and upon approval of the details no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (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 to this reserved space; such land and access thereto shall be provided prior to the occupation of the building hereby permitted and shall be used for or be available for use for the parking, loading and off-loading of vehicles at all times when the premises are in use.

Reason: The development, without the provision of parking, loading and off-loading space, would be detrimental to amenity and likely to lead to inconvenience and danger to road users by virtue of vehicles parked on the public highway amenity

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

Reason: In the interests of residential amenity.

- (13) The access details shown on the approved plans shall be completed prior to the occupation of any buildings hereby approved, and the accesses shall thereafter be maintained and shall make use of bound surface materials for the first 5 metres of the access from the edge of the adopted highway

Reason: In the interests of highway safety.

- (14) Full details of the bunding (include plans and cross section of the bund) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any residential development and implemented subject to an implementation plan approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity

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

5187-PL-01 Rev B Redline Plan

10182/HL/02 Rev C Proposed Roundabout Ashford Road

10182/HL/03 Rev A Proposed Junction Brogdale Road

Reason: In the interests of proper planning and for the avoidance of doubt.

- (16) No impact pile driving in connection with the construction of the development shall take

place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1700hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (17) No development shall take place until a detailed mitigation strategy for all protected

species has been submitted to, and approved in writing by, the Local Planning Authority. The development shall then be implemented in accordance with the agreed arrangements.

Reason: In the interests of protecting and encouraging biodiversity.

- (18) No development shall take place until a strategy for updating ecological surveys, where development is not implemented within two years of the date of the surveys, has been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the agreed strategy.

Reason: In the interests of protecting and encouraging biodiversity.

- (19) No development of the residential phase of the scheme, nor of the commercial phase, hereby approved shall take place until a Construction and Environmental Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved Statements for both the residential and commercial elements of the scheme shall be adhered to throughout the construction period for those phases. These shall include details relating to:
- (i) The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the development site during the construction phase;
 - (ii) The loading and unloading and storage of plant and materials on site;
 - (iii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (iv) The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;
 - (v) Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
 - (vi) Measures to control mud deposition off-site from vehicles leaving the site;
 - (vii) The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);
 - (viii) The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site;
 - (ix) The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking;
 - (x) Lighting strategy for the construction phase, designed to minimise light spillage from the application site; and
 - (xi) Phasing of the development in accordance with the phasing plan in the S.106.
 - (xii) Arrangements to limit the hours when construction vehicles can use the A2/A251 junction until such time as the Junction Improvement Works have been delivered.

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

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

timetable which has been submitted to and approved in writing by the Local Planning Authority.

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

- (21) Construction of any phase of the development hereby approved shall not commence until details of the proposed means of foul drainage for that phase have been submitted to and approved in writing by the Local Planning Authority, in consultation with Southern Water, Natural England and the Environment Agency.

Reason: In the interests of achieving an acceptable scheme of foul drainage and in the interests of minimising flood risk and ground water contamination.

- (22) No development shall take place until a Green Infrastructure and Biodiversity Management Plan (GIBMP), has been submitted to and approved in writing by the Local Planning Authority, and the development shall be implemented in accordance with the agreed details.

Reason: In the interests of protecting and encouraging biodiversity

- (23) The details submitted in pursuance of condition (1) above shall be in accordance with a

Development Brief that shall first have been agreed in writing by the Local Planning Authority and which shall include the following:

- (a) Details of the road layout for the site;
- (b) A comprehensive network of segregated pedestrian and cycle routes;
- (c) An overall landscape strategy for the application site;
- (d) An overall sustainable surface water drainage strategy for the application site (based on a network of open ditches and ponds);
- (e) A strategy for the architectural treatment of the buildings on the site, including elevational treatment, roof design and the palette of colours;
- (f) A strategy to maximise opportunities for biodiversity across all parts of the application site, including within the residential parcels;
- (g) A lighting plan for the site, to include details of the lighting columns, the type and luminance of the lighting units with glare shields and details of lux levels, both inside and outside the site;
- (h) A strategy for dwelling storey heights;
- (i) A strategy for ensuring the sympathetic development of part of the site close to Brogdale Road and Ashford Road;
- (j) A strategy for cycle parking; and
- (k) A strategy to ensure that development is set back by an appropriate distance from the high-pressure gas pipeline that crosses the site.

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

- (24) The details submitted pursuant to condition (1) above shall include cross-sectional drawings through a relevant phase, of the existing and proposed site levels within that phase and the immediately adjacent land. The development of that phase shall then be completed strictly in accordance with the approved levels.

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

- (25) Prior to each phase of development approved by this planning permission being commenced a remediation strategy that includes the following components to deal with the risks associated with contamination of that phase shall be submitted to and approved, in writing, by the local planning authority
1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.
- Sufficient information has been provided to satisfy part 1 of the above condition.

Reason: To ensure any possible land contamination related to historic site activities is addressed in line with current planning guidance on sustainable development. To protect controlled waters and comply with the NPPF: Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution.

- (26) No occupation of each phase of development shall take place until a verification report
- demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To protect controlled waters and comply with the NPPF.

- (27) If, during development of a relevant phase, contamination not previously identified is found to be present in that phase then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out in that phase until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To protect controlled waters and comply with the NPPF.

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

Reason: To protect controlled water and comply with the NPPF.

- (29) Adequate precautions, to be previously agreed in writing by the Local Planning Authority, shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience.

- (30) During construction provision shall be made on the site, to the satisfaction of the Local Planning Authority and in accordance with details that shall first have been agreed in writing with them, to accommodate operatives' and construction vehicles parking, loading, off-loading or turning on the site.

Reason: To ensure that vehicles can be parked or manoeuvred off the highway in the interests of highway safety.

- (31) No development within a relevant phase shall take place until a full tree survey, tree impact assessment, tree protection plan and arboricultural method statement in accordance with the recommendations of BS 5837:2012 for that phase have been submitted to and approved in writing by the local planning authority. The method statement shall detail implementation of any aspect of the development that has the potential to result in the loss of or damage to trees and hedges, including their roots, and shall take account of site access, demolition and construction activities, foundations, service runs and level changes. It shall also detail any tree works necessary to implement the approved scheme.

Reason: No such details have been provide and to safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

- (32) No development shall take place until a detailed strategic landscape scheme (which shall be native species and of a type that will encourage wildlife and biodiversity) designed in accordance with the principles of the 'Swale Landscape Character and Biodiversity Appraisal' (2011) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show all existing trees, hedges and

blocks

of landscaping on - and immediately adjacent to - the site and indicate whether they are to be retained or removed. It shall detail measures for protection of species to be retained, provide details of on-site replacement planting to mitigate any loss of

amenity

and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and a minimum five year management programme.

Reason: No such details have been submitted and to ensure a satisfactory setting and external appearance to the development

- (33) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five

years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

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

- (34) (i) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the Local Planning Authority. The detailed drainage scheme shall be based on the preliminary strategy prepared by Brookbank Consulting Ltd (May 2015) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of through open infiltration features located within the curtilage of the site.
- (ii) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- i) a timetable for its implementation, and
- ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

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

- (35) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority (in consultation with the Environment Agency); this 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.

Reason: To protect controlled water and comply with the NPPF

- (36) Before development commences within a relevant phase details shall be submitted (or as part of reserved matters) for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community within that phase. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.

Reason: In the interests of residential amenity.

- (37) The off-site highway works associated with the development are indicated on the following drawings:

- a) 10182/HL/02 Rev C - Proposed Roundabout Ashford Road
- b) 10182/HL/03 Rev A - Proposed new Junction onto Brogdale Road
- c) 10182/HL/02 Rev C - footpath provision to the site frontage along Ashford Road, and provision of a pedestrian crossing
- d) 10182/HL/06 Rev A - improvement of the Brogdale Road footpath
- e) 10182/HL/06 Rev A - improvement of the Brogdale Road/A2 junction

No work shall commence on the development site until off site highway works (a) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority. Off site highway works (b) above shall be constructed in accordance with the phasing plan to be approved pursuant to the Section 106 agreement dated 23 March 2017.

No more than 75 dwellings within the development shall be occupied until the off site highway works d) and e) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and convenience.

- (38) Details relating to the upgrade of the existing public footpath (known as ZF18) to a public bridleway within the site shall be submitted to, and approved in writing by, the Local Planning Authority before the development is commenced and shall be implemented in accordance with the agreed details and a timetable that shall have been agreed in writing with the Local Planning Authority before the development is commenced.

Reason: In the interests of highway and pedestrian safety and convenience.

- (39) All land allocated for development as employment land, Use Class B1 and shown on the submitted 'Illustrative Layout' Drawing Number: 5187-PL2-02 Revision B shall be retained for such uses and for no other purpose.

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

Informative(s):

- (1) You are advised that the approval of any details relating to conditions of planning permission 15/504264/OUT that have already been permitted by the Local Planning Authority, will apply equally to this decision notice and do not need to be re-submitted.
- (2) It is the responsibility of the applicant to ensure before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
- (3) Environment Agency informatives

Waste on site

The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice: excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution treated materials can be transferred between sites as part of a hub and cluster project some naturally occurring clean material can be transferred directly between sites. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

The Environment Agency recommends that developers should refer to our: Position statement on the Definition of Waste: Development Industry Code of Practice and; website at www.environment-agency.gov.uk for further guidance.

Fuel, Oil and Chemical Storage

Any facilities for the storage of oils, fuels or chemicals shall be provided with secondary

containment that is impermeable to both the oil, fuel or chemical and water, for example a bund, details of which shall be submitted to the local planning authority for approval. The minimum volume of the secondary containment should be at least equivalent to the capacity of the tank plus 10%. If there is more than one tank in the secondary containment the capacity of the containment should be at least the capacity of the largest tank plus 10% or 25% of the total tank capacity, whichever is greatest. All fill points, vents, gauges and sight gauge must be located within the secondary containment.

The secondary containment shall have no opening used to drain the system. Associated above ground pipework should be protected from accidental damage. Below ground pipework should have no mechanical joints, except at inspection hatches and either leak detection equipment installed or regular leak checks. All fill points and tank vent pipe outlets should be detailed to discharge downwards into the bund.

Advice for developers

We have produced advice with Natural England and the Forestry Commission on how new development can help improve the environment. This is in line with the national planning policy framework (NPPF) "the planning system should contribute to and enhance the natural and local environment" (Para 109).

<https://www.gov.uk/government/publications/planning-a-guide-for-developers>

(4) Scotia Gas Networks Informatives:

The high pressure gas pipeline in the vicinity of the proposed development has a Building Proximity Distance (BPD). The building proximity distance (zone 1) is 3 metres either side of the pipeline. This should not however be confused with the HSE consultation zones 2 & 3 which will be considerably greater. Zone 1 is a safety factor with reference to habitable buildings as recommended by IGE/TD/1. It is calculated from the diameter, material, wall thickness and pressure of the particular pipeline. Under Pipeline Safety Regulations 1996 this distance is declared to the HSE. Any intrusion within this safety zone should not be taken lightly and any intention to proceed should be accompanied by a risk assessment or provision of other supporting evidence especially in the event of any legal proceedings at a later date. I have attached a copy of our plans showing the pipeline in relation to this site. Pipelines laid in private land are protected by a Deed of grant, which prohibits certain activities within the easement strip like no addition to or removal of surface levels, no structures over or within the specified distance of the pipeline. Further details are

available if you require them. A request to us for any copies could incur a small fee, payable in advance. The easement strip is 8 metres in width. 4 metres either side from the centre-line of the pipeline. Any vehicle crossings over the pipeline will require: calculations to prove that no additional stresses will be incurred; a design showing the roadway in relation to the pipeline; and method statements to be agreed with SGN before it goes ahead. Road crossings need to be kept to a minimum.

This pipeline is of prime importance to the gas supplies of this area. Should any work be contemplated it is essential that you comply with the restrictions detailed below and in the document SGN/SP/SSW22 in order to protect our plant and equipment and for the safety of your own operatives

- 1) No mechanical excavation is allowed within 3 metres either side of pipeline.
- 2) No plant or storage of equipment shall be made within any easement strip.
- 3) If any metallic pipes or cables are being laid in proximity to gas pipelines then interference testing will be required, the cost of which to be borne by the promoter of the works. A minimum clearance of 600mm is required.
- 4) All precautions stated in publication SGN/SP/SSW22 (Safe Working in the Vicinity of High Pressure Gas Pipelines) shall be fully complied with in all respects. Acceptance of SSW22 shall be acknowledged by the responsible site person signing and returning the form Appendix A (back page) to the SGN representative contacted in (7).
- 5) No thrust boring shall take place within three metres of the pipeline.
- 6) All planting within the easement strip should comply with Notes for Guidance on Tree Proximity.
- 7) Before commencing work on site you must contact our Pipeline Maintenance Section on 0141 4184093 at least three days before work commences. A Southern Gas Networks representative will then contact you to arrange to visit site. Details of working near to high-pressure gas pipelines can then be discussed.
- 8) Pipeline sections that are planned and agreed by SGN to be permanently covered (i.e. by road surface) will require a coating survey. SGN will repair any indicated coating defects free of charge. The survey costs will be borne by the promoter of the works. Prior to any surface cover cathodic protection coupons and reference cells will require installation at no cost to SGN.
- 9) This pipeline is cathodically protected and as such has test cables located in surface boxes, were these to be lost through this work we would look to you for remedial action at no cost to SGN.
- 10) Intrusive construction methods will require an agreed method statement prior to work starting.
- 11) The minimum proximity between the high pressure gas pipeline and any wind turbine should be 1.5 times the fixed mast height excluding the turbine of the wind turbine. If you are planning to construct a wind turbine closer than this, then you must contact SGN immediately.
- 12) Any extended period of SGN site supervision may incur charges to you. These will be charged based on visiting times, materials and occurrences. You will be informed when these come into effect and be invoiced direct.
- 13) Any piling or boreholes within 15 metres of the pipeline may require vibration monitoring. No piling or boreholing must take place within 3 metres of the pipeline.

(5) Broadband Provision
The BT GPON system is currently being rolled out in Kent by BDUK. This is a laid fibre optical network offering a single optical fibre to multi point destinations i.e. fibre direct to premises.

(6) Southern Water

- The applicant should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. Please contact Atkins Limited at Anglo St James House, 39A Southgate Street, Winchester, SO23 9EH, or 'southernwater.co.uk'
- (7) This development is also subject to an agreement under Section 106 of the Town and Country Planning Act 1990 as amended.
- (8) Please note you must comply with all the conditions attached to this permission. Otherwise the permission may not be valid and any development may be unauthorised.

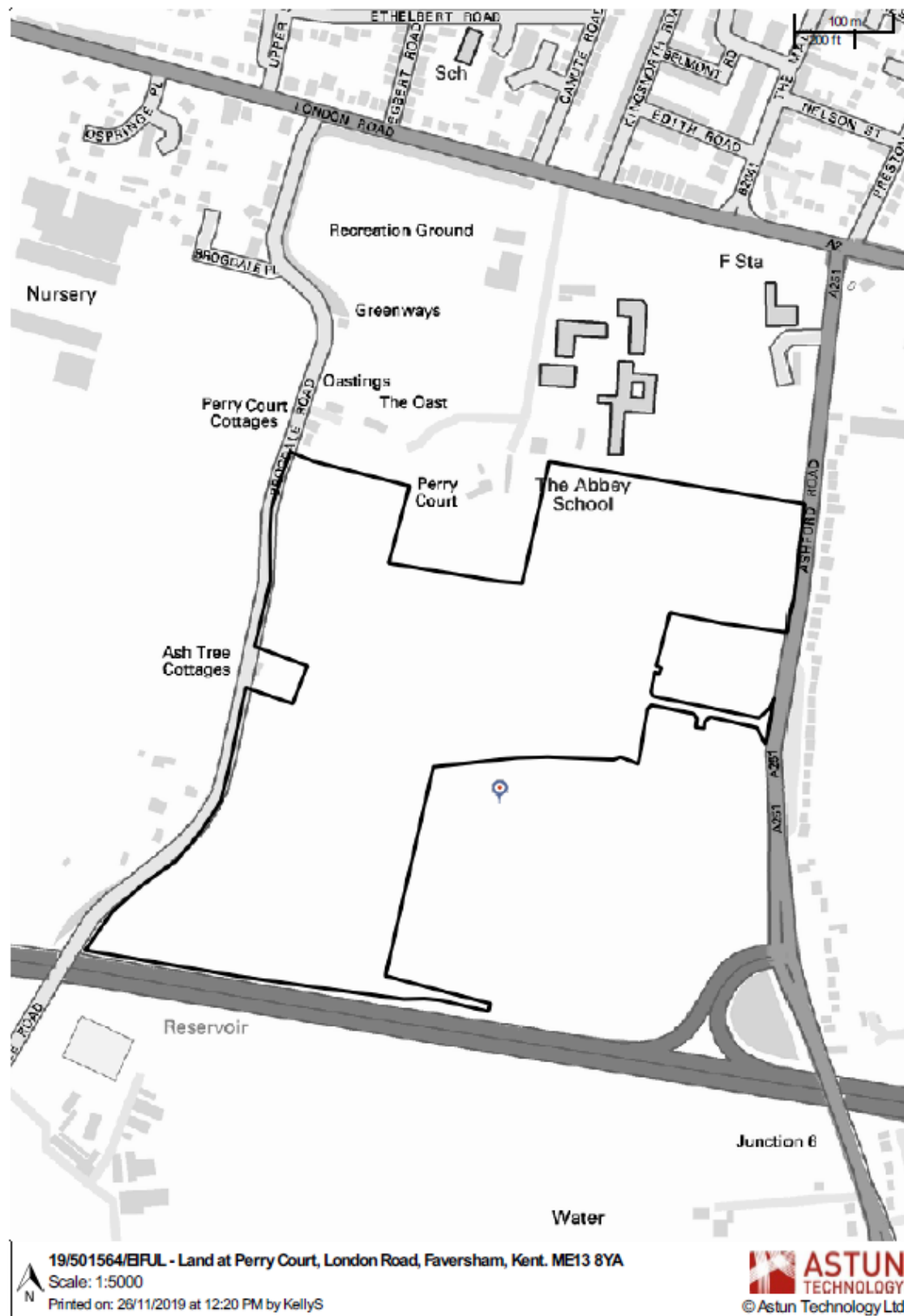
The Council's approach to the application

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.



PLANNING COMMITTEE – 5 DECEMBER 2019**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO - 18/506225/OUT		
APPLICATION PROPOSAL		
Outline application for residential development comprising of nine 2 bed bungalows together with provision of a community orchard. Matters relating to access and layout to be determined, with appearance, landscaping and scale reserved for future consideration.		
ADDRESS Land To The South Of School Lane Lower Halstow Kent ME9 7ES		
RECOMMENDATION REFUSE		
SUMMARY OF REASONS FOR REFUSAL		
The application site is located outside of the built confines of Lower Halstow and within the open countryside. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside and would result in the unnecessary permanent loss of best and most versatile agricultural land.		
REASON FOR REFERRAL TO COMMITTEE		
Parish Council support		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Crabtree & Crabtree (Lower Halstow) Limited AGENT Grange Ash Limited
DECISION DUE DATE 01/02/19		PUBLICITY EXPIRY DATE 27/08/19

Planning History

17/501505/OUT

Outline application (some matters reserved) for residential development comprising of nine 2 bed retirement bungalows, together with provision of a community orchard - Access and layout being sought.

Refused Decision Date: 24.07.2017

1. DESCRIPTION OF SITE

- 1.1 The application site lies outside the built up area boundary, to the south of Lower Halstow. It amounts to Best and Most Versatile agricultural land (BMV), being classified as Grade 2.

- 1.2 Open fields lie to the south and west, while Lower Halstow Primary School lies to the east and a recently built residential development lies to the north. There are a number of large, prominent trees on the boundary with the school. There are a number of school buildings facing the site, the closest being approximately 2m from the boundary, with a number of large facing windows overlooking the site.
- 1.3 The site itself is in use for keeping horses, and is subdivided into paddocks. Two stable buildings lie in the south east corner of the site, although there is no record of permission having been granted for these structures.
- 1.4 From School Lane, the land rises to the south, and the site is elevated above the development to the north. It is also visible in long distance views from Breach Lane to the east. A public footpath runs through the site, (although access to it appears to be restricted at present) with further public footpaths (from which the site is visible) to the west.

2. PROPOSAL

- 2.1 The application seeks outline permission for the erection of 9no. two bedroom bungalows. Approval is sought for access and layout. The application also seeks consent for the use of part of the site as a “community orchard”, although it seems to me that this does not in itself require planning permission.
- 2.2 Access would be taken from School Lane, in part using the existing access to the recent residential development to the north of the application site. The existing public footpath is shown on the plans as being “reinstated”. The proposed community orchard would wrap around the western and southern boundaries of the site.
- 2.3 The site would be laid out with three pairs of semi-detached bungalows, and a terrace of three, all facing inwards towards the access road and a central soft landscaped area. Each of the bungalows would have a single parking space, either located adjacent or, in the case of the proposed mid-terrace unit, opposite, with a visitor parking area proposed to be located in the north west of the site, with 6 parking spaces.
- 2.4 The bungalows would each measure 10m wide and between 9.5m and 10m deep. Garden sizes vary across the site, with the smallest being 7m deep and 10m wide, and the largest being a maximum of 25m wide, 18m deep.
- 2.5 The closest bungalow to the school would be located 11m from the building. The closest bungalow to the residential development to the north would lie approximately 35m from the nearest dwelling.
- 2.6 The application is accompanied by an ecological impact assessment, a planning statement, a “retirement bungalow survey”, a transport statement, a water management strategy, and a design and access statement. Additional information submitted since the application was registered includes a draft s.106 agreement, an appraisal of alternative sites considered in and around Lower Halstow, and an example of a similar scheme in Blean.
- 2.7 The application is, essentially, a resubmission of 17/501505/OUT, only with less public open space proposed, and with further justification submitted in respect of a perceived need for bungalows within Lower Halstow.

3. PLANNING CONSTRAINTS

The site lies within a mineral safeguarding area as defined in the Kent Minerals and Waste Local Plan, and amounts to BMV agricultural land

4. POLICY AND CONSIDERATIONS

4.1 The following are relevant:

The National Planning Policy Framework (NPPF)

The following paragraphs are relevant:

8 – Three overarching objectives of sustainable development

10 & 11 – Presumption in favour of sustainable development

12 – The importance of the development plan in decision making

54-56 – The use of planning conditions and planning obligations

59 – Supporting the government’s objective of significantly boosting housing supply

60 & 61 – Assessing and addressing housing mix

77 – Provision of affordable housing in rural areas on exception sites

79 – Circumstances under which isolated homes in the countryside might be acceptable

92 – Provision of social, recreational and cultural facilities the community needs

98 – Protection and enhancement of public rights of way

122 – Making efficient use of land

124, 125 & 127 – High quality design

170 – Development should contribute to and enhance the natural and local environment and recognise the importance of BMV agricultural land

175 & 176 – Impact of development on habitat sites

206 – Protection of minerals safeguarding areas

The Kent Minerals and Waste Local Plan 2013-30

Policy DM7 relates to safeguarding mineral resources and states

KCC’s adopted “Safeguarding Supplementary Planning Document” is relevant

Swale Borough Local Plan 2017

The following policies are relevant:

ST1 – Delivering sustainable development in Swale

ST3 – The Swale settlement strategy

CP3 – Delivering a wide range of high quality homes

DM7 – Vehicle parking

DM9 – Rural exception housing

DM14 – General development criteria

DM19 – Sustainable design and construction

DM24 – Conserving and enhancing valued landscapes

DM28 – Biodiversity and geological conservation

DM31 – Agricultural land

The Council's adopted SPD – "Landscape Character and Biodiversity Appraisal" is relevant. The site lies within the Upchurch and Lower Halstow Fruit Belt.

5. LOCAL REPRESENTATIONS

5.1 8 representations objecting to the development have been received, which are summarised as follows:

- Lack of facilities in the village, and poor public transport;
- Development is on greenfield land;
- Will result in further applications for residential development on agricultural land to the south;
- Design of properties is not in-keeping with existing properties in village;
- Development will exacerbate existing flooding;
- The access is dangerous
- Insufficient parking proposed, which will lead to increase in parking on School Lane;
- There is no guarantee that these will remain occupied by older people, will not be long before any age including young families living in these;
- There is no guarantee that nine 3 and 4 bedroom properties in the village will freed up for families by the development of these bungalows. It is merely increasing the size of the village;
- There are no guarantees that the orchard shown on the proposals as a community orchard will ever be planted;
- Loss of value to existing dwellings;

- Site is prime agricultural land;
- Will be hugely intrusive to one writer's property, home and family life;
- Site is outside of the village boundary.
- Increase in cars and traffic;
- Retirement bungalows are not required as there are enough bungalows in the village already;
- The village has no doctor's surgery, or dentists, the village shop is very small and not suitable for a weekly or monthly shop. The bus services to any of these facilities either in Rainham or Sittingbourne are not regular enough.
- The access road from the proposed site joins School Lane at its narrowest point, by the bridge, which is serious choke point, as it is not suitable for two cars to pass at the same time.
- There must be improvements to the infrastructure prior to approval.
- The site is located outside of the built up area of Lower Halstow and within the open countryside;
- No change since the previous refusal
- The proposed restriction on sales to local residents is welcome. There however remain unanswered questions as to whether residents will be able to freely sell on to people under 55 or will this be restricted to over 55, or who will maintain the communal areas, i.e. will there be a property management company who will charge an annual fee?
- It is of concern that the property is marketed as retirement development.
- Potential buyers point out in their supportive statements the lack of local services, public transport, medical services and shopping facilities.
- The outline plans do not indicate the development is meeting the needs of people with limited abilities.
- The route to the nearest bus stop contains a part narrow road without pavement and an incline to the development.
- The applicant refers to a similar development in Blean near Canterbury, however that development is on flat ground and Blean is a larger community (6,000 residents as opposed to 1,200 in Lower Halstow) and close to a large city (Canterbury) with good public transport in accessibility and frequency. Blean also has a post office and a large village shop.
- The marketing survey carried out in Lower Halstow did not include a survey of the residents of Blean as to any shortcomings of the proposed accommodation. Apart from the lack of local services, the proposed parking allocation is below the one space per bedroom as in other developments, and with the narrow

access on that part of School Lane, this could be problematic. The proposed parking spaces in Lower Halstow seem to lack additional space for opening doors for people with limited mobility.

- It is of further concern that the company carrying out the survey seems half owned by the applicant and the other half by his spouse, it seems difficult to avoid the impression of bias and the scientific basis for the survey is not clear.
- In view of the limitations, it is difficult to see how this development can be seen as other than a development of small residencies, that would suit buyers to downsize and equity release, but does not seem to have any other facilities making it appropriate for retirement purposes.
- It does not allow residents that are unable to live in the village in their current accommodation due to frailty of old age, to remain in the village.
- It should be judged on its merits as small properties, outside the village envelope, on Greenfield land, with likely insufficient parking facilities.

5.2 13 representations in support have been received, including one each from the agent and his wife (who both live locally), and two from the same address elsewhere. They are summarised as follows:

- It is hard to imagine or recall another planning application anywhere in the borough with more justification for approval than this one;
- Planners should get behind the spirit of the NPPF directives and local opinion and approve this scheme without delay.
- Many villages in the UK and especially Lower Halstow are being starved of new development by well-meaning but as we now know misguided development policies, to the point where services and resources are being reduced in rural settlements as an outcome of the lack of development;
- Whilst this application is not necessarily designed for new and young families it will have the effect of 'Freeing up 'at least Nine 3 and 4 bed properties within the village for occupation by the same.
- The latest government planning policies and directives make it very clear that local preferences and needs should take priority with decision makers.
- Many elderly villagers have lived in the village for many decades and hate the prospect of being forced to move away one day from everything they know, and they love.
- There is a need for these bungalows in Lower Halstow.
- The affordable housing in Breach Lane development provided accommodation for younger people from the village to purchase to enable them to stay where they grew up. The same should be done for elderly residents
- There are a limited number of small rental bungalows within the village but rarely available.

- The current village facilities are what these potential 'downsizers' are used to and do not want to leave and lose the village community they have grown with.
- All levels of government recognise the urgent need to plan for a rapidly ageing population. In Swale, the proportion of the retired population is rising faster than the national average.
- Lower Halstow has many retired residents who occupy large homes with multiple spare rooms. It is clear that elderly residents are deeply rooted in the community and don't want to leave the village with family, friends and neighbours on-hand within the village.
- Being able to move to a small bungalow would offer an ideal opportunity to remain part of their community with lower running costs and more suitable domestic facilities.
- Central government and County Council policies require planning authorities to urgently provides suitable accommodation for the increasing retired population.
- The application includes safeguards to ensure occupation by local residents through a legal agreement and there are many more residents interested in the bungalows than the 9 proposed.
- It would not set a precedent for inappropriate development as it meets a particular and justified need.

6. CONSULTATIONS

The Environmental Health Manager does not raise objection, subject to a condition limiting hours of construction

KCC Highways and Transportation do not raise objection, subject to conditions

KCC Ecology do not raise objection, subject to conditions.

KCC Public Rights of Way Officer does not object to the application.

KCC Planning did not respond in respect of mineral safeguarding

The Housing Manager does not object but notes that this scheme does not relate to affordable housing, and that whilst there is an identified need for affordable housing for 11 dwellings in Lower Halstow according to the latest data (a Housing Needs Survey for the period 2013-2018) there was a very limited identified need for housing for the elderly.

Lower Halstow Parish Council comment as follows:

11th January 2019:

It was re-iterated that this was a green field site outside of the village built up boundary, and there were concerns regarding the design for elderly people, and affordability. However, it should be noted that several members of the public spoke and were in favour of this application; the feeling amongst most Councillors at the meeting was that a development of retirement bungalows was in general thought to be a good idea.

24th January 2019:

To reflect the actual support for this application, the following proposal was made at an Extraordinary General Meeting on 23rd January:

The Parish Council wishes to show its strong support for this planning application (18/506225/OUT) to reflect the views of the parishioners and of the Parish Council, and requests that Swale Borough Planning Authority approve this application.

Swale Footpaths Group comment as follows:

It appears that the north end would run beside a road. A pavement, kept free from parked vehicles, is needed here. At one point the path would run behind a house. Its security and privacy will need to be addressed at the planning stage (e.g. secure walls and/or fences) but should not be invoked at a later stage to seek extinguishment or diversion of ZR 46.

7. BACKGROUND PAPERS AND PLANS

- 7.1 Application papers, plans and correspondence for applications 17/501505/OUT and 18/506225/OUT

8. APPRAISAL

Principle of Development

- 8.01 The site is located on the edge of, but outside, the village confines of Lower Halstow. The main relevant planning policy is ST3 of Local Plan, which states that at locations in the open countryside outside the built up 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.
- 8.02 Currently the Council cannot demonstrate it has a 5 year supply of housing land and therefore the NPPF “tilted balance” is applicable. Therefore the key issue is whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits, This is addressed in the section headed “planning balance” below.
- 8.03 Lower Halstow is designated as a Tier 5 village in the Council’s settlement strategy, with some sustainable characteristics. The supporting text to the policy states that development at these villages is not needed to meet housing targets, but that windfall developments could help meet local needs and improve the viability of services, through modest redevelopment and infill opportunities. Such development opportunities are likely to be limited both within, and *exceptionally*, when required, at the edges of built up area boundaries.
- 8.04 The scheme proposes to deliver 9 x retirement units. Policy CP3 sets out the Council’s approach for the delivery of a wide choice of homes. This includes the provision of older persons accommodation, to meet a significant forecast increase in the population over 65 years of age. The supporting text to this policy states that the greatest future demand is for two/three bedroom owner-occupied dwellings, and

one/two bedroom private rent and affordable dwellings, and that development for housing specifically aimed at occupiers over 65 should, in the first instance, aim to reflect this. The policy states that development proposals will be steered to locations in accordance with policy ST3, and will meet the housing requirements of specific groups, including older persons.

- 8.05 Policy DM9 of the Local Plan sets out the Council's approach to local needs rural exceptions housing. This essentially allows for small scale local affordable housing in areas where housing would not normally be permitted. Such development has to be clearly justified through an up to date parish or village housing needs assessment by a recognised / appropriate body, a thorough site options appraisal and a prepared statement of community involvement with significant input from the parish council.
- 8.06 The application has been made as a private housing development, with no affordable housing proposed. The justification for the development is made on the basis that the village population is aging and that many local residents under-occupy their homes and would like to downsize. The application is accompanied by a survey carried out by the agent, which indicates that there are retirement age households within the village who wish to downsize and would consider moving to bungalows.
- 8.07 Members should be clear that whilst this is evidence of a general desire of elderly villagers to downsize, it is not in compliance with the rural exceptions policy in the local plan, and Members should not, in my view, give significant weight to it on this basis. It is indicative of a general desire, not an independent, properly constructed Housing Needs Assessment.
- 8.08 The agent has provided a plan showing alternative sites around the village, together with reasons why these would not be considered acceptable. I am generally in agreement with the unacceptability of these sites. It does not though follow that the development proposed here should be considered acceptable on this basis. To presume that otherwise unacceptable development should be approved because the site chosen is not the worst in the vicinity would be wholly wrong.
- 8.09 To summarise – the site lies outside the built up area boundary, the application does not propose local needs affordable housing, or indeed any affordable housing of any type, and is not supported by a village housing needs assessment. On this basis, I consider that the application would be contrary to Policy ST3 of the Local Plan, and the development is unacceptable as a matter of principle.

Impact upon character and appearance of area

- 8.10 The site is located at the edge of the village on sloping land, and elevated from School Lane. It is surrounded by open countryside to the south and west, and the land slopes down into a valley on the west side of the site, before rising again towards Breach Lane. As a result of this, the site is clearly visible from a number of viewpoints on School Lane, Breach Lane, and on various public footpaths in the surrounding area.
- 8.11 The existing site is in use as horse paddocks. Other than a small stable building in the corner of the site, the land has an open and rural character. Visually, the site functions as part of the countryside surrounding the village.

- 8.12 The existing boundary of the village is marked by existing housing and the recent residential development to the north of the site. The primary school is visually prominent to the east of the site although this is not within the village envelope - and these buildings are clearly visible in the landscape, as well as the new development to the north of the site. The proposal would extend the built form into this area of open countryside.
- 8.13 Given that the application site is essentially open and undeveloped and has the fundamental characteristics and appearance of countryside, in my opinion the development of this site would cause harm to the intrinsic value and beauty of the countryside, especially in a village fringe location with a series of public footpaths nearby, where local residents would view, use and experience the immediate surrounding countryside. In this respect, the development would be contrary to Policy ST3 of the Local Plan.
- 8.14 In landscape terms, the site falls within the Upchurch and Lower Halstow Fruit Belt. This sets out that Lower Halstow has been affected by late 20th Century urban sprawl, and that this has increased the size of the village, affected its aesthetic quality and the sense of remoteness that the village once had. The appraisal also refers to the lack of quality and coherency of the landscape at the urban fringe and outskirts of settlements.
- 8.15 The application proposes to plant a community orchard to the south and west of the proposed development. Whilst this would take some time to mature, the effect of this planting would be to offer some screening to the backdrop of the village, which is currently somewhat exposed. This would potentially improve and provide some definition to the landscape setting on the edge of the village, and would enhance the landscape setting to the village. In my view, this would not mitigate the harm caused by the construction of 9 new dwellings in a paddock on the edge of the village. The purpose of landscaping is to soften the impact of development and not to hide otherwise visually harmful development from view.
- 8.16 The scale and appearance of the development would be part of the reserved matters. Nonetheless, the application includes drawings to demonstrate how a scheme for the site could be designed. As shown, the buildings would be single storey and barn-like in appearance, with stained weatherboarded elevations. I am satisfied that the scale and design of built form could be high quality. In this respect, the layout and design of the development would be in accordance with policy CP4 of the emerging plan.
- 8.17 Being located immediately next to the built confines of the village, the site would provide good access to services and facilities within the village. In this respect, the site would have some sustainability benefits. However this would apply to many similar countryside sites on the fringe of towns and villages, is not unique to this site and is not a matter which weighs significantly in favour of approving this scheme,
- 8.18 In summary, there would be harm to the intrinsic value, setting, tranquillity and beauty of the countryside through the proposal to develop this site for housing, which would extend the built form of the village and in turn erode the countryside fringe around the village, contrary to ST3 of the Local Plan. In landscape terms, the scheme would provide structured planting to the west of the site, which in turn would provide a more

defined edge to the village, and would comply with policy DM24 of the Local Plan. However – this is not, in my view, sufficient to warrant approval of the scheme.

Residential Amenity

- 8.19 The proposed development would be sited in excess of the normal minimum overlooking distance of 21 metres from all surrounding dwellings. The site is capable of accommodating adequately sized amenity spaces for the occupiers of the dwellings, and whilst the site is located close to the village school, I do not consider that this would have significant amenity impacts on either the school or the occupiers of the proposed dwellings. The scheme is acceptable in this regard.

Highways

- 8.20 The application would provide parking alongside each property, together with space for 6 vehicles within a parking courtyard to the north. The KCC Parking guidelines seek a minimum of 1.5 spaces per dwelling in a village location which, together with visitor spaces, would equate to 15 spaces on this site – which is the number provided. I also consider that the type of development as retirement housing would be likely to result in less cars per household than the parking guidelines would account for. The KCC Highways Officer does not object to the scheme.
- 8.21 The proposal would access School Lane via new roadway that would be upgraded to provide a dedicated pedestrian pavement. No objection has been raised by KCC Highways on traffic generation or road safety.
- 8.22 The KCC PROW Officer does not object and I consider the scheme acceptable in this regard.
- 8.23 Overall, I do not consider that and highways safety issues would be likely to arise from the development.

Other Matters

Drainage / Flooding

- 8.24 Some residents have raised concern over localised flooding and drainage problems relating to the site and surrounding area. The site is not within the floodplain. The applicant has submitted a foul and surface water management strategy, which is acceptable.

Ecology

- 8.25 Ecological information has now been submitted to the satisfaction of the KCC Ecologist. If permission were to be granted, suitable conditions would need to be imposed in this respect. SAMMS payments for each dwelling would be required (an HRA/AA is attached below). None have been provided, but this could be addressed if permission were to be granted.

Agricultural land Classification

- 8.26 The land falls to be considered as Best and Most Versatile agricultural land. Policy DM31 of the Local Plan states that development on such land will only be permitted where there is an overriding need that cannot be met on land within built up areas, or where the land is allocated for development, where there is no alternative site on lower quality land, and where the remainder of the agricultural holding would not become unviable as a result of development. In this instance, although the site is not currently used for agricultural purposes, it could easily revert to such use. I am clear that no overriding need has been demonstrated for this development – merely a preference on the part of some villagers to move to smaller, single storey accommodation. I am firmly of the view that the development of this land is unnecessary. On this basis, the proposal would fail to accord with DM31 of the Local Plan.

The Public Open Space and Community Orchard

- 8.27 The proposed community orchard would have the potential to enhance biodiversity and provide a resource to local residents. Although no detail of how this would be managed has been submitted, it could be dealt with by a management company. The provision of this facility is a benefit, to be considered in the balance below.

Occupancy of units

- 8.28 The application proposes that the units would be restricted to persons aged 55 years and over. I am satisfied that such restrictions could be controlled via a S106 agreement.
- 8.29 The applicant has also offered measures to sell the units to local persons first, and has referred to an application at Oakside Park, Dunkirk, where a S106 agreement secured nomination rights to require units at a residential caravan site to be offered to local persons prior to sale to a wider market. He considers that a similar agreement could be used for the application site. As this mechanism has been used by the Council on another site relating to the ownership / occupancy of private units, I consider that a similar mechanism could, in principle, be utilised on this site. However – Members should be clear that this does not equate to affordable housing for local people. The dwellings would presumably be offered at the market rate, and should no local people apply, they would be free to be placed on the open market. Furthermore, there would need to be a mechanism to require this to take place for any subsequent sales. There is no guarantee that this development would, in the short medium or longer term, address any perceived need (noting that no evidence of such a need in Lower Halstow has been presented) within the village – if the dwellings are not taken up by villagers, they would be sold to those outside the village.

9.0 FINAL BALANCING AND CONCLUSION

- 9.01 The site falls outside of the built confines of the village and would be contrary to the Local Plan. The Council cannot demonstrate a five year supply of housing land. However – in my view, this development would cause substantial harm to the character, appearance and intrinsic beauty and tranquillity of the countryside, and would amount to the unnecessary and permanent loss of best and most versatile agricultural land.

- 9.02 The application submits that the proposal would meet an identified need for retirement housing in the village. However no substantive evidence has been provided to demonstrate such need – the agent has carried out a survey of residents, but there is nothing presented to demonstrate anything above a desire of some residents to downsize.. In the absence of clear justification for the scheme, the weight that can be given to this is limited.
- 9.03 The proposal includes measures to improve the landscape setting around the village, through a community orchard. This would also bring other benefits through the provision of a community resource. However this would only potentially offer screening to a small part of the village edge, and the benefits are limited by virtue of the relatively small size of the orchard area proposed. Whilst these are benefits, I would only give these limited weight. In addition, the need for a community orchard does not arise as a direct result of the development proposed, and in my view Members should justifiably be very wary of giving this matter any weight in the decision making process.
- 9.04 Given the above, the limited benefits of the scheme are, in my view, significantly and demonstrably outweighed by the harm it would cause. As such, the application should be refused.

10. RECOMMENDATION

REFUSE for the following reasons:

- 1) The application site is located outside of the built confines of Lower Halstow and within the open countryside. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside and would result in the permanent loss of best and most versatile agricultural land. The proposal would be contrary to policies ST3 and DM31 of the Swale Borough Local Plan 2017. The provision of retirement housing, and other proposed benefits through the provision of a community orchard and area of public open space do not outweigh the identified harm.

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.

Appropriate Assessment

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

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

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.

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.

The 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.

However, the proposed development is of a small scale and, were it to be approved, in itself and in combination with other development, it would not have an adverse effect on the integrity of the SPA, subject to planning conditions.

Notwithstanding the above, 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 North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

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 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.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

