

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 30 May 2019

Time: 7.00 pm

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

Membership:

Membership will be confirmed following Annual Council on 22 May 2019.

Quorum = 6

RECORDING NOTICE

Please note: this meeting may be recorded.

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

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

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

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

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 [25 April 2019](#) (Minute Nos. 608 - 613) as a correct record.

4. Declarations of Interest

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

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

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

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

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

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

Part B reports for the Planning Committee to decide

5. Deferred Item

1 - 90

To consider the following application:

18/503723/MOD106 – 153 London Road, Sittingbourne, Kent, ME10 1PA

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

Requests to speak on this item must be registered with Democratic Services (democraticservices@swale.gov.uk or call us on 01795 417328) by noon on Wednesday 29 May 2019.

6. Report of the Head of Planning Services

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To consider the attached report (Parts 1, 2 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on Wednesday 29 May 2019.

Issued on Tuesday, 21 May 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, 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

30 MAY 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 – 30 MAY 2019

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- Deferred Items
- Minutes of any Working Party Meetings

DEFERRED ITEMS

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PART 1

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PART 2

2.1 Pg 97 - 105	18/506323/FULL	MINSTER	Meadow View Park, Irwin Road
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2.2 Pg 106 - 120	19/500050/FULL & 19/500051/LBC	TUNSTALL	Tunstall Church of England Primary School
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5.2 Pg 170 - 172	18/502617/FULL	EASTCHURCH	Friston, Lower Road
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5.3 Pg 173 - 176	18/506066/FULL	FAVERSHAM	10 Althelston Road
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5.4 Pg 177 - 179	18/505431/FULL	NEWINGTON	Ashfield Court Farm, School Lane
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5.5 Pg 180 - 182	18/502592/FULL	SHEERNESS	19 Victory Street
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PLANNING COMMITTEE – 30 MAY 2019**DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 REFERENCE NO - 18/503723/MOD106			
APPLICATION PROPOSAL Modification of Planning Obligation dated 18/05/2010 under reference SW/08/1124 to allow a reduction of on site affordable housing.			
ADDRESS 153 London Road Sittingbourne Kent ME10 1PA			
RECOMMENDATION Grant Modification			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal would provide three on site affordable units. Although this a lower provision than the eight units secured under the original Section 106 Agreement, it is at a level which complies with policy DM8 of the adopted Local Plan and is appropriate when considered in light of the viability evidence.			
REASON FOR REFERRAL TO COMMITTEE Initially called in by Cllr Mike Baldock, subsequently called-in by Head of Planning Services at Committee meeting on 7 th March 2019 and deferred by Members at Committee meeting on 4 th April 2019.			
WARD Borden And Grove Park		PARISH/TOWN COUNCIL	APPLICANT Clarity Properties Ltd AGENT Brachers LLP
DECISION DUE DATE 07/09/18		PUBLICITY EXPIRY DATE N/A	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
16/507631/LDCEX	Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016.	Approved	08.12.16
16/508336/NMAM D	Non material amendment to alter the description of application SW/08/1124 to reflect the approved drawings which show 13 one bedroom apartments and 13 two bedroom apartments.	Approved	08.12.16
SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and	Approved	08.08.13

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

1.0 INTRODUCTION

- 1.01 Members will recall that this application was reported to Planning Committee on 7th March 2019 and 4th April 2019. These reports are appended (along with the appendices which were attached to the previous committee report(s)) and provide the details of the application site, the proposals considered at that time and relevant policies. The application reported to Planning Committee on 7th March 2019 was deferred following the Head of Planning calling in the application *“as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance.”* As a result, the application was reported back to Planning Committee on 4th April 2019.
- 1.02 The proposal submitted to the 4th April 2019 Planning Committee was amended to provide a mechanism whereby in the first instance the provision of 3 on site affordable housing units would be delivered if a Registered Provider (RP) was willing to take this on. However, if after rigorous testing there were no RP's willing to do so then a commuted sum would be provided to contribute towards affordable housing elsewhere in the Borough. Members resolved that the application was deferred *“until after the meetings with the Applicant and Registered Providers had taken place.”*

2.0 PROPOSAL

- 2.01 Although it is contained in the appendices to this report, for clarity the proposal as considered at the 7th March 2019 Planning Committee sought to modify the Section 106 Agreement so that prior to the occupation of the 21st unit, a commuted sum of £40,000 is paid in one instalment for off site affordable housing. As set out above, this application was deferred and subsequent to this a revised proposal was submitted. This sought to modify the Section 106 Agreement to provide for 3 affordable units on site in the first instance. However, there was a fall back option proposed that if on site affordable units were not able to be delivered then a commuted sum of £40,000 would be provided. This proposal set out that no more than 22 open market units would be occupied prior to the delivery of the affordable units or commuted sum. This amended proposal was reported to 4th April 2019 Planning Committee and again deferred as stated above in paragraph 1.02.
- 2.02 Further to the latest deferral, discussions between the applicant and a RP have progressed in a positive way and a further amendment to the proposal from that previously considered has now been put forward. The agent has submitted the following to describe the proposed modification now being considered:

(i) The s106 agreement will be varied to provide for 3x units of affordable housing on site – the current affordable housing requirements in the Council's adopted policy require 10% on site provision equating to 2.6 units which has been rounded up to 3.

(ii) The three units will all be Shared Ownership.

(iii) The Developer will not be permitted to occupy more than 22 Open market units until such time as the AHUs have been transferred to a Registered Provider.

3.0 APPRAISAL

- 3.01 As set out above, the application now before Members has been amended quite significantly from the original proposal to amend the Section 106 Agreement. The modification now seeks to amend the Section 106 Agreement to provide 3 on site affordable units. Any possibility of providing a commuted sum as the alternative to affordable housing has been removed in its entirety from the modification being sought.
- 3.02 For the avoidance of doubt, the current Section 106 Agreement requires 30% of the units on site to be provided as affordable units. This would equate to 8 units. However, this agreement was signed when the policies of the 2008 Local Plan were applicable. Policy DM8 of the adopted Local Plan confirms that developments within Sittingbourne will be required to provide 10% of the total number of units as affordable, which in this case would equate to 3 units. Due to the specific viability evidence submitted in support of the proposal I am of the view that a reduction from 30% to 10% is now wholly compliant with policy.
- 3.03 As Members will note from the above, the 3 units will be provided as Shared Ownership tenure. The supporting text to policy DM8 does set out that in first instance, of the affordable units, an indicative target of 90% affordable rent and 10% intermediate products (usually Shared Ownership) will be sought. However, the supporting text states that specific site circumstances may affect the viability of individual proposals which may result in an alternative tenure being acceptable.
- 3.04 Throughout the course of the consideration of this proposal the Council's Strategic Housing and Health Manager has been heavily involved in discussions. This has continued and I have discussed both the proposed quantum of affordable housing and the tenure split with her. She has confirmed that the number of affordable units on this site, totalling three, is acceptable. In respect of the tenure, she has stated that this is a practical approach in management terms for a RP when delivering affordable tenure within an open market block, which is the case here. Furthermore, the specific viability evidence in this case demonstrates that the profit level of this development is 0.65%. I also note that the original Section 106 Agreement does not specify a tenure mix of the affordable units and therefore, it would have been possible without modifying the agreement to provide all the affordable units as Shared Ownership tenure.
- 3.05 Therefore when taking into account the adopted Local Plan, the viability evidence and the comments of the Council's Strategic Housing and Health Manager I am of the view that the proposal to provide 3 affordable units, as Shared Ownership tenure is acceptable.
- 3.06 The 26 residential units provided within the development are split as 12, two bedroom and 14, one bedroom dwellings. The units that have been proposed to be provided as the three affordable units are 2 x 2 and 1 x 1 bed units. I have also discussed this with the Council's Strategic Housing and Health Manager who considers this mix to be acceptable. Therefore, on the basis of the split of the units of the development as a whole I consider that the split of the affordable units would be appropriate.

- 3.07 In terms of the trigger point, Members will note that no more than 22 open market units can be occupied until the affordable units have been transferred to a Registered Provider. Although this is slightly later than the proposal as considered at the 7th March 2019 meeting, it is consistent with the trigger point for the proposal considered at the 4th April 2019 meeting and which Officer's believed to be acceptable. Therefore, as the proposal has now been amended to provide certainty in respect of the delivery of on site affordable units, and removes the possibility of the commuted sum, I consider this trigger point to be reasonable.

4.0 CONCLUSION

- 4.01 I note from the Committee Minutes of the 4th April 2019 meeting that a number of points by Members were made in respect of three affordable units on this site being acceptable and that the commuted sum approach was not appropriate. In this respect, the proposed modification secures 3 on site affordable units and removes the commuted sum approach in its entirety. I am of the view that this is wholly acceptable and in accordance with adopted policies.

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

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

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



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APPENDIX 1**PLANNING COMMITTEE – 4 APRIL 2019****DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

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

APPENDIX 1

SW/13/0568	to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation.	Approved	08.08.13
SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access.	Approved	18.05.10

MAIN REPORT**1.0 INTRODUCTION**

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

2.0 PROPOSAL

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

- (i) *“The s106 agreement would be varied to provide for 3x units of affordable housing on site – the current affordable housing requirements in the Council's adopted policy require 10% on site provision equating to 2.6 units which has been rounded up to 3;*
- (ii) *The Developer will not be permitted to occupy more than 22 Open market units until such time as the AHUs have been transferred to a Registered Provider;*
- (iii) *During a three month period from completion of the deed of variation the Developer will offer the 3x units to the Registered Providers identified in our meeting; i.e. Sage and Landspeed and any others which our client and your Housing Department may identify. The developer will provide evidence of the offers to the Council's Planning and Housing Managers;*

APPENDIX 1

- (iv) *If at the end of that three month period the developer can demonstrate to the Council's Planning and Housing Managers that no Registered Provider is willing to take the units then the affordable housing provisions in the s.106 will default to a financial contribution of £40,000;*
- (v) *The default contribution will not be conditional upon a further viability appraisal and will be payable before the occupation of more than 22 Open Market units."*

3.0 APPRAISAL

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

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2019 planning committee (attached here as Appendix 1, I am of the firm view that a commuted sum of £40,000 would in this scenario, due to the viability constraints, be policy compliant. I do recognise that Members were minded to refuse the application which solely proposed this commuted sum. However, I believe that if a RP is not able to deliver the units on site, this would provide a fall back option, which would enable the delivery of affordable housing units elsewhere in the Borough.

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

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for 18 dwellings at 109 Staplehurst Road and 16/501883/FULL for 45 one and two bedroom dwellings at 4 Canterbury Road – the Council has agreed to support a RP with the delivery of affordable housing units in the Borough. The commuted sum, if provided in this case would also be put towards the delivery of affordable units, likely through a similar arrangement. As such, I am very firmly of the view that if an RP is unable to bring forward on site affordable provision then the commuted sum can be used to enable the delivery of affordable housing off site, in the same way that the commuted sums in the above two cases have been.

4.0 CONCLUSION

- 4.01 As a result of the above, I am very firmly of the view that the proposal now provides for the potential for an RP to bring forward affordable units on this site. The level of affordable provision is proposed to be 3 units which in light of the adopted Local Plan and in the context of the viability evidence is in my view acceptable. However, due to the potential barrier of providing these units, as has been discussed in both this and the previous committee report, I am also of the firm view that having the commuted sum as a fall-back option provides the Council with the certainty that, if necessary, this scheme will contribute towards the provision of affordable housing elsewhere in the Borough.
- 4.02 On the basis of the above, I believe that in light of the viability evidence, the recent appeal decision and the revised proposal, this proposal is policy compliant. I therefore consider that there are no material planning grounds on which this proposal could be refused. As a result, if the Council were to refuse this application, I believe that there is the strong possibility that a subsequent appeal would be extremely difficult to successfully defend and that an award of costs could be made against the Council.
- 4.03 In conclusion, I take the view that the Section 106 should be amended on the basis of the wording as set out above and recommend that the modification is granted.

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

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

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APPENDIX 2**PLANNING COMMITTEE – 7 MARCH 2019****PART 1**

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

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

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

MAIN REPORT**1.0 DESCRIPTION OF SITE**

- 1.01 The application site is 0.09 hectares in size and rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (A2). The site lies to the west of Sittingbourne Town Centre and residential properties lie opposite and to the west of the site. A Petrol Filling Station is located on the opposite side of London Road slightly to the east.
- 1.02 Construction of the 26 residential units (granted planning permission as per the history section above) has begun on site and has reached an advanced stage.

2.0 PROPOSAL

- 2.01 The current proposal is to modify the Section 106 agreement attached to the original planning permissions (SW/08/1124 & SW/13/0568) to allow the removal of the requirement for on-site affordable housing. Among other things, the requirement of the Section 106 agreement is currently for the provision of 30% affordable housing on site (8 units), although a tenure split was not specified.
- 2.02 In addition, the Section 106 agreement required the following developer contributions:
- i) £227 per dwelling for library improvements;
 - ii) an open space contribution of £17,940;
 - iii) an adult social services contribution of £2362.85;
 - iv) a community learning contribution of £981.05;
 - v) a primary education contribution of £590.24 per dwelling; and
 - vi) a secondary education contribution of £589.95 per dwelling.
- 2.03 Officer's have negotiated with the applicant that prior to the occupation of the 21st unit, a commuted sum of £40,000 is to be paid in one instalment for off site affordable housing. The wording of the Section 106 agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.
- 2.04 It is important at this point to set out the background to this application as Members may recall that a similar proposed modification was reported to Planning Committee on two separate occasions in 2017 for the removal of on site affordable housing - For clarity, there is no reference number for this previous application as it was not submitted separately as a formal modification to the Section 106 agreement, but rather as a proposed modification under the original planning permissions (as referenced above). Therefore I have included the previous committee reports related to this proposal as appendices to this report which I will summarise as follows.
- 2.05 The previous application to modify the Section 106 was initially submitted proposing the removal of on site affordable housing, a viability appraisal upon occupation of the 21st unit and a

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commuted sum of a maximum of £31,000 if the scheme achieved a certain level of profit. This proposal was reported to the Planning Committee of 2nd February 2017 with an Officer recommendation of approval. Members resolved:

“That the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for offsite affordable housing, and that it can not be dependant upon their profit margins.” As a result of this, the applicant undertook a viability appraisal which was independently assessed and concluded that the scheme would not be viable if affordable housing was provided. I have included this viability report and independent assessment as appendices to this report.

- 2.06 The application was reported back to Members at the 14th September 2017 Planning Committee meeting. The proposed modification was again to remove the requirement for on site affordable housing with a viability re-assessment submitted upon the occupation of the 21st unit. However, the proposal was altered to propose a commuted sum of a minimum of £31,000 if it was viable to do so, despite the conclusions of the viability appraisal and independent assessment as referred to above. There was again an Officer recommendation for approval. At the meeting, Members resolved that *“That the modification to the Section 106 Agreement for SW/08/1124 & SW/13/0568 be rejected and officers discuss alternative options with the applicant.”*
- 2.07 As set out above, the proposal considered in 2017 had not been submitted as a formal modification under Section 106A of the Town and Country Planning Act. Therefore, there was no requirement to issue a formal decision notice and there was no right of appeal for the applicant.

3.0 POLICY AND OTHER CONSIDERATIONS

3.01 The National Planning Policy Framework (NPPF)

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

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

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

APPENDIX 2**3.02 National Planning Practice Guidance**

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

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

And

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

The section entitled 'Viability' states the following:

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

And

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

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

And

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

3.03 Bearing Fruits 2031: The Swale Borough Local Plan 2017

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

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

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

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

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

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

4.0 CONSULTATIONS

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

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

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

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

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

In addition, the following was stated:

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

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

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

5.0 BACKGROUND PAPERS AND PLANS

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

6.0 APPRAISAL

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

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

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

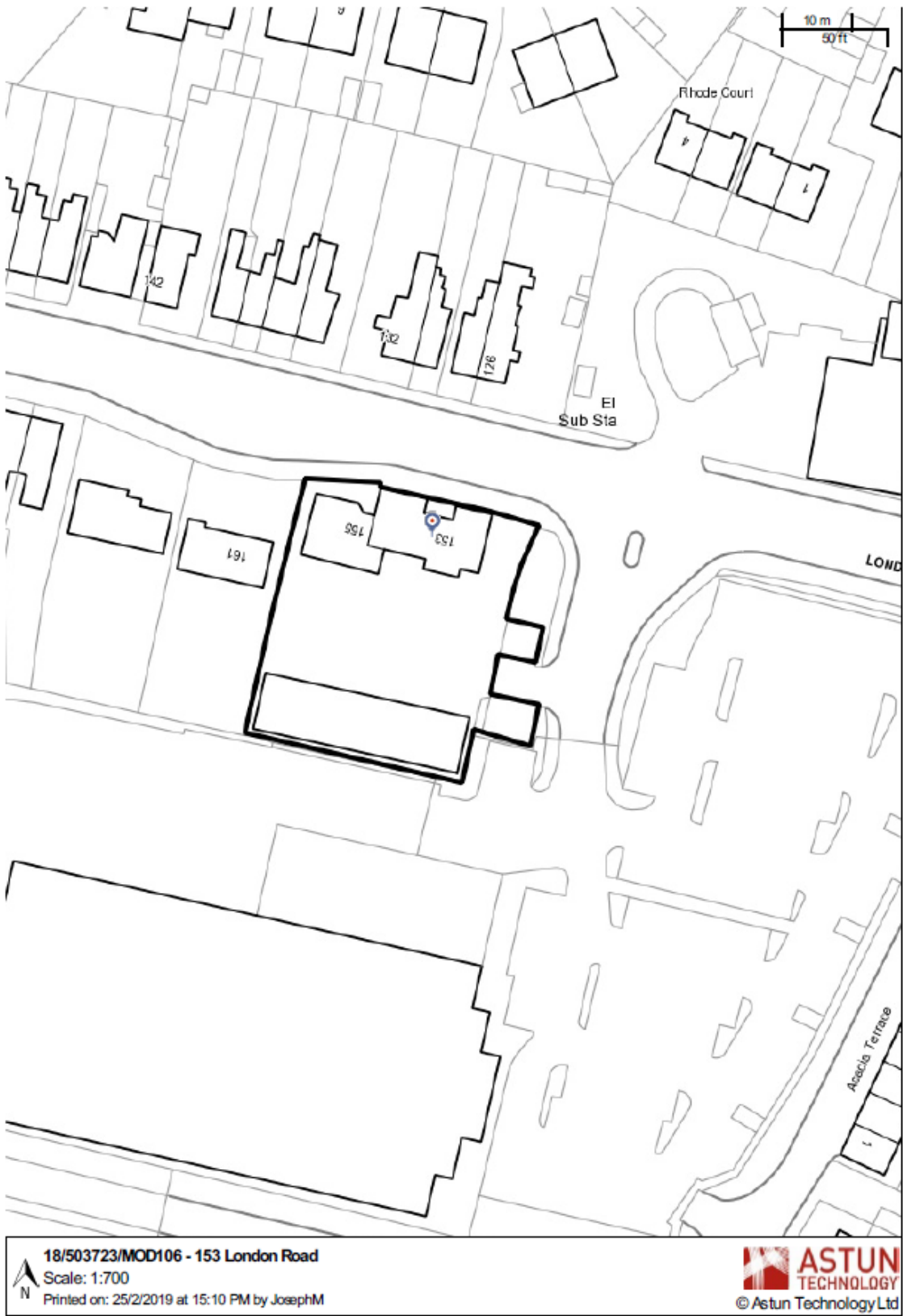
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6.09 In undertaking the assessment of the final planning balance, I give weight to the viability report (and independent assessment) carried out in 2017 and that the scheme would be providing, what is considered in this specific case, a commuted sum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

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

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

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

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SW/08/1124	Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access.	Approval	18.05.10
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MAIN REPORT**1.0 DESCRIPTION OF SITE**

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

2.0 PROPOSAL

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

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

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

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

3.0 POLICY AND OTHER CONSIDERATIONS

- 3.01 The National Planning Policy Framework (NPPF) – paragraph 173 is quoted below.
- 3.02 National Planning Practice Guidance (NPPG): Viability & Planning Obligations
- 3.03 Swale Borough Local Plan 2008: SP1 (sustainable development); SP4 (housing) and; H3 (affordable housing).
- 3.04 Bearing Fruits 2031 The Swale Borough Local Plan Proposal Main Modifications June 2016: ST1 (sustainable development); ST2 (development targets for jobs and homes); CP3 (delivering a wide choice of high quality homes) and; DM8 (affordable housing).
- 3.05 Supplementary Planning Documents: Developer Contributions 2009
- 3.06 Section 106A of the Town and Country Planning Act 1990 allows the modification and discharge of planning obligations.

4.0 CONSULTATIONS

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

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

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

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

5.0 BACKGROUND PAPERS AND PLANS

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

6.0 APPRAISAL**Principle of Development**

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

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

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

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

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

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

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

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

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

6.07 Paragraph 173 of the NPPF states:

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

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

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

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

7.0 CONCLUSION

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

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

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

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

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REPORT SUMMARY

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

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

MAIN REPORT

1.0 INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

2.0 APPRAISAL

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

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

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

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

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

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

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

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

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

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

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

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

3.0 CONCLUSION

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

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

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

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

Prepared for Clarity Properties Limited and Swale Borough Council
8th June 2017

Tim Mitford-Slade MLE MRICS

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

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1. Executive Summary

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

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

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

2. The Site

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

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

3. Background

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

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

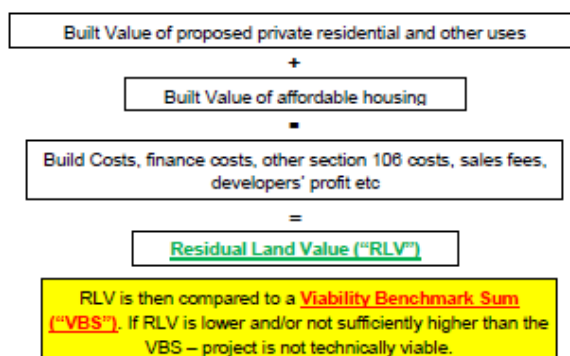
- 3.5 The NPPF refers to ensuring viability and delivery of development at Sec. 173-177 and states “to ensure viability, the costs of any requirement likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should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

4. Basis of Appraisals

- 4.1 The appraisals and figures provided herein do not strictly speaking fall within the scope of the RICS (Royal Institution of Chartered Surveyors) “Red Book” and is not a formal valuation in that context. However, the principles of good practice have been followed and detailed justification for the indicative values and/or component valuation appraisals are provided. More to the point, the appraisal is in direct line with the RICS Guidance on Financial Viability in Planning.
- 4.2 The report is provided purely to assist planning discussions with Swale Borough Council.
- 4.3 The viability report is provided on a confidential basis and I therefore request that the report should not be disclosed to any third parties (other than Swale Borough Council and their advisers), under the Freedom of Information Act 2000 (Section 41 and 43/2) or under the Environmental Information Regulation. The report is not to be placed in the public domain. In addition, I do not offer Swale Borough Council, their advisers and/or any third parties a professional duty of care.

5. Viability and Planning

- 5.1 Scheme viability is normally assessed using residual valuation methodology.
- 5.2 A summary of the residual process is:



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

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

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

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

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

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

7. The Proposed Scheme

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

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

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

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APPENDIX 3**153-155 London Road, Sittingbourne, Kent, ME10 1PE****8. Market Value of Existing Site (Viability Benchmark)**

- 8.1 I have had sight of the Title Register for the Property, which confirms the current owner purchased the site for a sum of £630,000 in 2007 at the height of the market, reflecting good prospects for development and attractive returns. Due to the fact the original planning application was submitted in 2008, I believe this purchase price is an accurate reflection of value at the time in relation to a potential residential development site. The market subsequently collapsed, with the Land Registry figures reporting a 19.2% decrease in residential values in Kent between the top of the market in December 2007 and the bottom in April 2009. The value of flats fell even greater than the average property according to the same data. This absolutely emphasises the necessity of developers allowing for a risk adjusted return due to wider market factors.
- 8.2 Since the purchase in 2007, the existing buildings on the site have been severely damaged by fire, which had led us to consider the subsequent impact on land value. However, the buildings were to be demolished as part of the planning application, and I would therefore argue that the value of the original development opportunity did not take the existing buildings into account.
- 8.3 Finally, due regard has been given to the land value of a vacant brownfield site in an urban location with clear development potential.
- 8.4 The conclusion reached is that the Property has an Existing Use Value or Viability Benchmark Sum, in line with the original purchase price of £630,000 against which the profit margin of the proposed scheme can be tested.

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

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

10. Development Value Appraisal

- 10.1 In order to assess the viability of the proposed scheme to bear affordable housing and 106 contributions I have constructed a development appraisal using the Argus Property Software Package, a widely used and recognised appraisal tool. The appraisal is attached as Appendix C and can be summarised as follows:
- A. Acquisition Costs – I have inserted the 2007 purchase price of £630,000 into the appraisal, along with the historic stamp duty paid at £13,700. Other fees bring the total acquisition costs to £687,500, whilst an additional uplift of £25 psf over 10,000 sq ft was also payable at £77,000,
- B. Revenue (Gross Development Value) – Based upon comparable evidence in the market place, the Gross Development Value is assessed at between £225 psf and £270 psf, dependent on the size of the units. Capital values therefore range from £100,000 for the smallest one-bedroom flat, to £180,000 for the largest 2-bedroom apartment. This takes into account comparable transactions in the locality as well as the particular characteristics of this site which is located on a relatively

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

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

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

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

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

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

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

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

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

11. Conclusion

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

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

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



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

8th June 2017

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DX59900 Sittingbourne 2
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Fax: 01795 417141
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TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568

Case no: 00744

NOTIFICATION OF GRANT OF PERMISSION TO DEVELOP LAND

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

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

153 London Road, Sittingbourne, Kent, ME10 1PA

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

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

SUBJECT TO THE CONDITIONS specified hereunder:-

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

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

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

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

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



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Prior to commencement

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

Grounds: In the interests of visual amenity.

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

Grounds: In the interests of visual amenity.

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

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

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

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

FOR FURTHER INFORMATION – SEE ATTACHED SHEET



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TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568
Case no: 00744

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

- i) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- ii) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

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

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

Grounds: In the interests of visual amenity.

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

Grounds: In the interests of amenity.

FOR FURTHER CONDITIONS & GROUNDS – SEE ATTACHED SHEET



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During Construction

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

Grounds: In the interests of residential amenity.

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

Grounds: In the interests of residential amenity

Prior to occupation

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

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

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

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

FOR FURTHER CONDITIONS & GROUNDS – SEE ATTACHED SHEET



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TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568
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- (14) All hard and soft landscaping plans shall be carried out in accordance with those approved details. The works shall be carried out prior to the occupation of the first dwelling in accordance with a programme agreed by the Local Planning Authority. The approved planting stock shall be maintained for a minimum period of five years following its planting and any of the stock that dies or is destroyed within this period shall be replanted in accordance with details to be submitted and approved by the Local Planning Authority.

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

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

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

On-going

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

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

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TOWN AND COUNTRY PLANNING ACT 1990

Application: SW/13/0568
Case no: 00744

Council's approach to this application

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

In this case the application was acceptable as submitted.

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

8th August 2013
Dated:

James Freeman
Head of Planning



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South East Valuations and Development & Planning



Viability in Planning

The Appropriate Level of Developers Profit in Viability Appraisals

November 2016

Introduction

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

Executive Summary

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

Viability Appraisals

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

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

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

Importance in Planning

There are several planning obligations imposed on developers by Local Authorities which include s106, s106BC (affordable housing) and CIL among others. Viability assessments play a crucial role in ensuring these obligations are not set at a level which would make the scheme unviable for the developer, and are often the basis for negotiations with the Council. According to official Government Planning Inspectorate Statistics¹, 43% of s106 Planning Obligations Appeals were allowed in 2015/2016 across the UK, with 44% of s106BC Appeals also allowed. These figures peaked in 2014/15 when 59% of s106 Planning Obligations appeals were allowed throughout the UK. This demonstrates that without these appeals, which are often supported by viability assessments, approximately half of the proposed major development in the UK would potentially fail to take place. Due to the importance of these assessments in taking development forward, there is huge scrutiny placed on the inputs which form the basis of the viability appraisals.

Industry Commentary

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

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

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RICS Research

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

Land at the Manor, Shinfield

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

Barratt Homes

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

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

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

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Indications from Local Authorities

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

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

Savills

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

Conclusion

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

Prepared by:**Luke Mullaney (BSc)**

South East Valuations and Development & Planning

Telephone: 01227473703

Email: luke.mullaney@struttandparker.com

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Strutt & Parker LLP

Development Appraisal

153-155 London Road Sittingbourne

Viability Appraisal for Swale Borough Council

SW/13/0568

Report Date: 21 June 2017

Prepared by Tim Mitford-Slade MLE MRICS

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APPRAISAL SUMMARY**STRUTT & PARKER LLP**153-155 London Road Sittingbourne
Viability Appraisal for Swale Borough Council

Summary Appraisal for Phase 1

Currency in £

REVENUE

Sales Valuation	Units	ft²	Rate ft²	Unit Price	Gross Sales
Flat 1 GF 2 bed 520 sq ft	1	520	250.00	130,000	130,000
Flat 2 GF 2 bed 541 sq ft	1	541	249.54	135,000	135,000
Flat 3 GF 1 bed 408 sq ft	1	408	257.35	105,000	105,000
Flat 4 GF 1 bed 408 sq ft	1	408	257.35	105,000	105,000
Flat 5 GF 2 bed 643 sq ft	1	643	241.06	155,000	155,000
Flat 6 FF 1 bed 456 sq ft	1	456	252.19	115,000	115,000
Flat 7 FF 1 bed 450 sq ft	1	450	255.56	115,000	115,000
Flat 8 FF 2 bed 537 sq ft	1	537	246.74	132,500	132,500
Flat 9 FF 2 bed 530 sq ft	1	530	245.28	130,000	130,000
Flat 10 FF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 11 FF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 12 FF 2 bed 666 sq ft	1	666	240.24	160,000	160,000
Flat 13 SF 1 bed 456 sq ft	1	456	252.19	115,000	115,000
Flat 14 SS 1 bed 450 sq ft	1	450	255.56	115,000	115,000
Flat 15 SF 2 bed 537 sq ft	1	537	246.74	132,500	132,500
Flat 16 SF 2 bed 541 sq ft	1	541	249.54	135,000	135,000
Flat 17 SF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 18 SF 1 bed 422 sq ft	1	422	260.66	110,000	110,000
Flat 19 SF 2 bed 643 sq ft	1	643	241.06	155,000	155,000
Flat 20 Pent 2 bed 801 sq ft	1	801	224.72	180,000	180,000
Flat 21 GF 2 bed 499 sq ft	1	499	250.50	125,000	125,000
Flat 22 FF 2 bed 499 sq ft	1	499	250.50	125,000	125,000
Flat 23 FF 1 bed 480 sq ft	1	480	250.00	115,000	115,000
Flat 24 FF 1 bed 480 sq ft	1	480	250.00	115,000	115,000
Flat 25 SF 2 bed 508 sq ft	1	508	246.06	125,000	125,000
Flat 26 SF 1 bed 373 sq ft	1	373	268.10	100,000	100,000
Rev Freehold Interest	1	0	0.00	78,000	78,000
Totals	27	13,074			3,338,000

NET REALISATION

3,338,000

OUTLAY

ACQUISITION COSTS

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

Other Acquisition

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

CONSTRUCTION COSTS

Construction	ft²	Rate ft²	Cost
Flat 1 GF 2 bed 520 sq ft	520 ft²	139.00 pF	72,280
Flat 2 GF 2 bed 541 sq ft	541 ft²	139.00 pF	75,199
Flat 3 GF 1 bed 408 sq ft	408 ft²	139.00 pF	56,712
Flat 4 GF 1 bed 408 sq ft	408 ft²	139.00 pF	56,712
Flat 5 GF 2 bed 643 sq ft	643 ft²	139.00 pF	89,377
Flat 6 FF 1 bed 456 sq ft	456 ft²	139.00 pF	63,384
Flat 7 FF 1 bed 450 sq ft	450 ft²	139.00 pF	62,550
Flat 8 FF 2 bed 537 sq ft	537 ft²	139.00 pF	74,643
Flat 9 FF 2 bed 530 sq ft	530 ft²	139.00 pF	73,670
Flat 10 FF 1 bed 422 sq ft	422 ft²	139.00 pF	58,658

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

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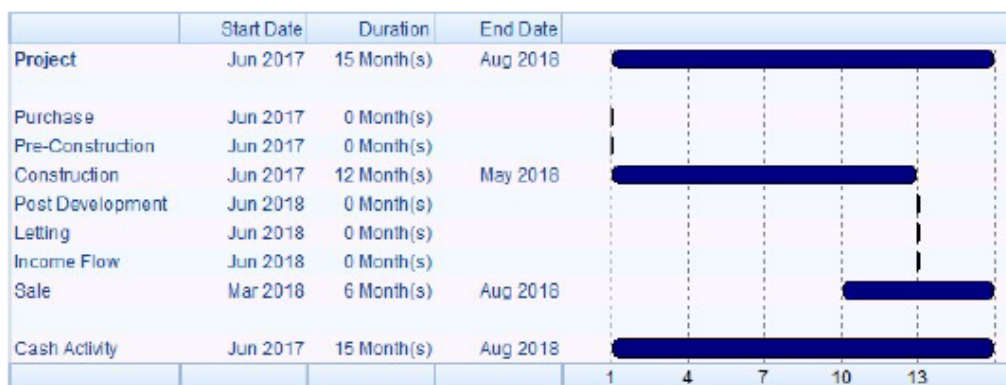
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153-155 London Road Sittingbourne
Viability Appraisal for Swale Borough Council

Project Timescale Summary

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

Phase Phase 1

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153 - 155 London Road, Sittingbourne

Viability Assessment

August 2017



CBRE

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CBRE

1.0 Introduction

- 1.1 CBRE has been appointed by Swale Borough Council (SBC) to provide viability advice in relation to the proposed residential development at 153 – 155 London Road, Sittingbourne. Clarity Properties Limited is the applicant and SBC is the Local Planning Authority. Strutt and Parker LLP is providing viability advice to Clarity Property Limited (the applicant) as part of the process.
- 1.2 CBRE is providing specialist viability advice to SBC relating to the proposed development at London Road by interrogating the issues associated with the viability of the scheme and by reviewing the development appraisals and supporting information submitted by the applicant.
- 1.3 The intention of CBRE's review is to analyse and critically appraise the appropriate level of affordable housing provision that the scheme can withstand when taking into account what is considered 'viable'. CBRE will critically evaluate the applicant's assertion that the development is suffering in terms of viability and cannot support any further contribution to affordable housing above the commuted sum already allowed for.
- 1.4 We understand the site currently benefits from a detailed planning consent (which includes a signed S106 agreement) and was granted on 8th August 2013 (planning reference SW/13/0568). The applicant submitted a modification to the S106 agreement which went to Planning Committee on 2nd February 2017, proposing the removal of on-site affordable housing, with a viability review on occupation of the 21st unit and a commuted sum payable at a minimum of £31,000. The S106 agreement allows for contributions totalling £36,191, the applicant has offered an additional £3,809 as a commuted sum towards off-site affordable housing. We understand the additional £3,809 has not yet been agreed by SBC.
- 1.5 SBC's policy requires 10% affordable housing provision within Sittingbourne with the tenure split being 90% rented and 10% shared ownership as set out in the recently adopted Local Plan 'Bearing Fruits 2031'.
- 1.6 CBRE's approach is based on undertaking a 'toolkit' development appraisal based on industry best practice¹ and considering whether there is a need for SBC to consider a reduction in its requirements (affordable housing and/or S106 obligations).
- 1.7 CBRE has had regard to the following reports and information in undertaking this report comprising:
 - Viability Report as prepared by Strutt and Parker LLP on behalf of the applicant dated June 2017; and
 - Development Appraisals prepared by Strutt and Parker LLP dated June 2017 appended to the applicant's Viability Report.
- 1.8 There has been an exchange of emails with Strutt and Parker to clarify some of the assumptions and inputs to the model.
- 1.9 Viability is at the heart of the delivery of development and this principle is embodied in the 2012 National Planning Policy Framework. This report therefore analyses and presents the viability issues affecting this site leading to a recommendation as to the appropriate affordable housing provision and level of S106 contributions that the scheme can support.

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

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

2.0 The Site

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

SITE AND PLANNING HISTORY

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

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

DEVELOPMENT PROPOSALS

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

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Table 1: Accommodation Schedule and Floor Areas

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

Source: Strutt and Parker LLP, June 2017

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THE SITE

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3.0 Key Viability Issues

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

Table 2: Applicant's Appraisal Outcomes

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

Source: Strutt and Parker LLP, 2017

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

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

4.0 Development Appraisal Assumptions and Methodology

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

COST ASSUMPTIONS

Build Costs

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

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

Other Development Costs

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

Abnormal and Infrastructure Costs

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

S106 Costs

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

Profit, Marketing and Other Assumptions

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

Fixed Land Value

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

Phasing and Programme

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

SALES VALUES ASSUMPTIONS

Residential Values

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

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

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

5.0 Development Appraisal Results

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

Table 3
Output of CBRE's Appraisal

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

CBRE, 2017

Benchmark Land Value

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

CBRE's appraisal should be compared with the sale of comparable sites in the open market at the current time.

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

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Summary

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

6.0 Summary and Recommendation

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

RECOMMENDATION

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


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

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Appendix 1 – Site Location Plan

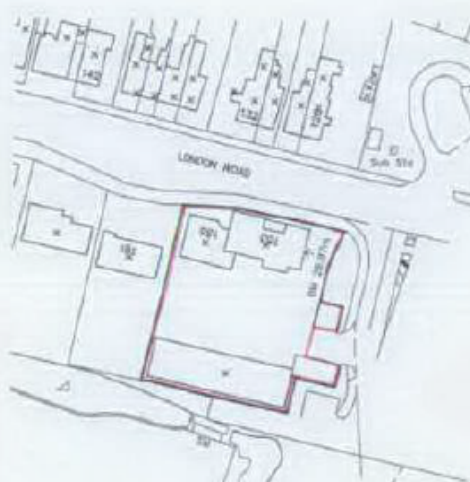
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Location Plan Scale 1:1250

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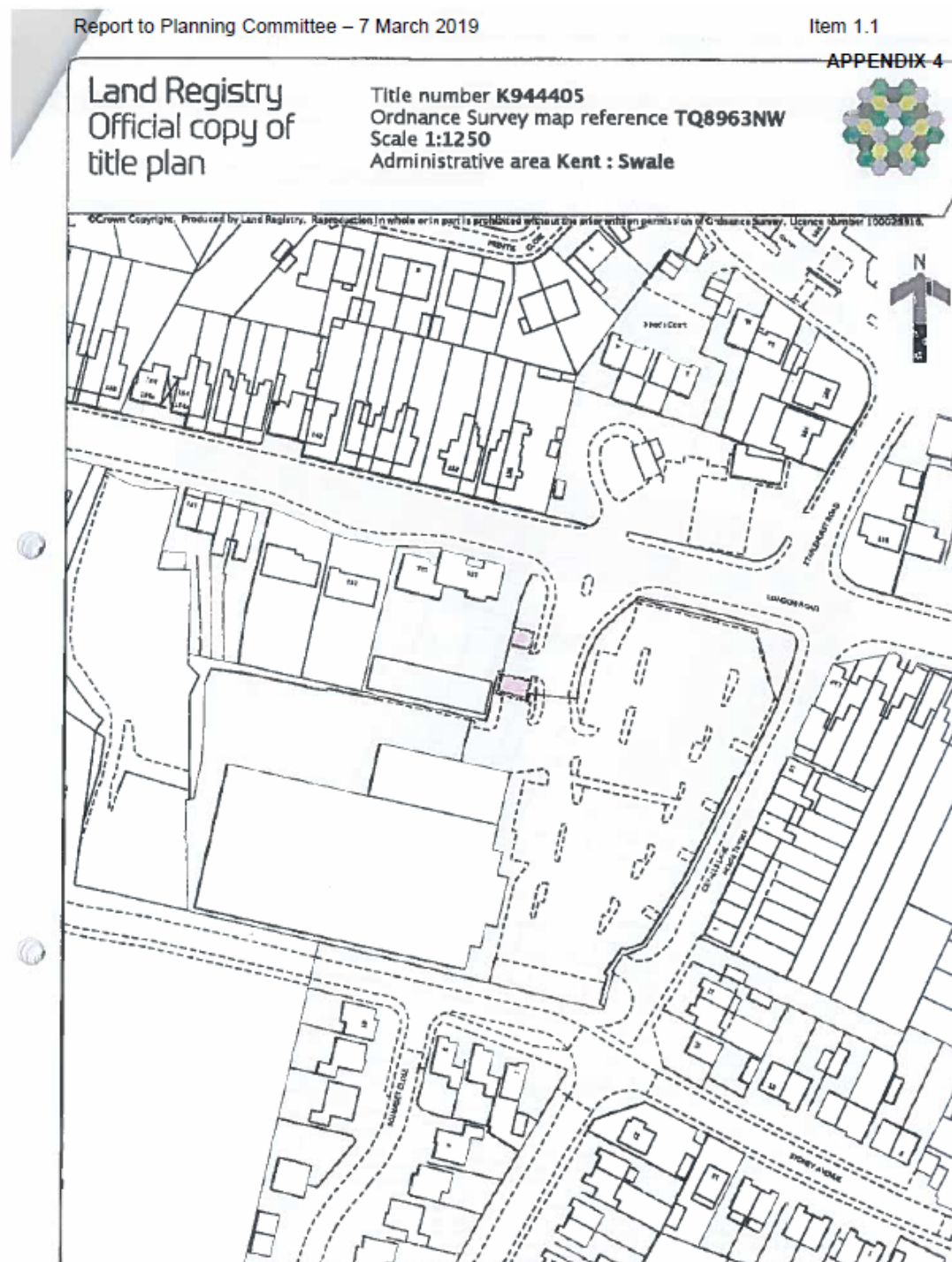
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Appendix 2 – Additional Land

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Appendix 3 – Sales Comparables

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153 - 155 London Road, Sittingbourne, Kent, ME10 1PE (Marketing Activity - August 2018) - within 5 miles						
New Build Developer	Scheme/Address	Plot	Type	Gross Asking Price	Sq ft	£ per sq ft
Redrow	Mierscourt Road, Rainham, Kent, ME8 8PH	Type A Whitbread Court (84-89)	1 bed apartment	£189,999	0	#DIV/0!
		Type D Whitbread Court (91,93,95)	2 bed apartment	£234,995	0	#DIV/0!
		Type B Whitbread Court (90, 92, 94, 97, 99 & 101)	2 bed apartment	£234,995	0	#DIV/0!
		Type C Whitbread Court (96,98,100)	2 bed apartment	£234,995	0	#DIV/0!
				£894,984.00	0	#DIV/0!
Unknown	Thomas Road, Faversham		1 bed apartment	£190,000	506	£375.49
				£190,000.00	506	£375.49
Second Hand - Sittingbourne Only						
Unknown	Vellum Drive, Sittingbourne, Kent		2 bed apartment	£180,000	596	£302.01
	Martin Court, Kemsley, Sittingbourne, Kent		2 bed apartment	£265,000	732	£362.02
	Onyx Drive, Sittingbourne, Kent		2 bed duplex	£165,000	710	£232.39
	Martin Court, Kemsley, Sittingbourne, Kent		2 bed apartment	£160,000	0	#DIV/0!
	Limehouse Court, Sittingbourne, Kent, ME10		2 bed apartment	£155,000	0	#DIV/0!
	East Hall Walk, Sittingbourne, Kent, ME10 3GA		2 bed apartment	£155,000	678	£228.61
	Fairview Road, Sittingbourne, Kent		2 bed apartment	£155,000	441	£351.47
	Reams Way, Kemsley, Sittingbourne, Kent		2 bed apartment	£150,000	0	#DIV/0!
	Abelyn Avenue, Sittingbourne		2 bed apartment	£140,000	673	£208.02
	Shortlands Road, Sittingbourne, Kent		1 bed apartment	£130,000	538	£241.64
	Onyx Drive, Sittingbourne		1 bed apartment	£110,000	331	£332.33
	Victoria Mews East Street, Sittingbourne, ME10		2 bed apartment	£180,000	872	£206.42
	Sanderling Way, Iwade, Sittingbourne, ME9		2 bed apartment	£170,000	611	£278.23
	2 bedroom Flat in Diamond Close, Sittingbourne, ME10		2 bed apartment	£165,000	721	£228.85
	2 bedroom Flat in Carnelian House, Diamond Close, Sittingbourne, ME10		2 bed apartment	£165,000	743	£222.07
	1 bedroom Flat in Trinity Court Church Street, Sittingbourne, ME10		1 bed apartment	£135,000	581	£232.36
	Sq ft	Price	Price per sq ft	Price per sq ft - 5%		
1 bed apartments	1450.00	£375,000	£258.62	£246	363	
2 bed apartments	6777.00	£1,740,000	£256.75	£244	678	
Total	8227.00	£2,115,000	£257.08	£244	633	

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SUMMARY AND RECOMMENDATION
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PLANNING COMMITTEE – 30 May 2019**PART 1**

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

1.1 REFERENCE NO - TPO No.6 of 2018	
APPLICATION PROPOSAL This report seeks the permission of the Planning Committee to Confirm without modification Tree Preservation Order No. 6 of 2018 for which objections have been received	
ADDRESS Blean Wood, Dunkirk, Kent	
RECOMMENDATION To Confirm without modification Tree Preservation Order No. 6 of 2018	
REASON FOR REFERRAL TO COMMITTEE One objection from local landowner	
TPO Served (Date): 30 th November 2018	TPO Expiry Date 30 th May 2019

1.0 INTRODUCTION

1.01 Tree Preservation Order (TPO) No. 6 of 2018 was made on the following grounds:

- (1) Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policy DM 29 states that the Borough Council will seek to ensure the protection of important trees in the local landscape. The wood contributes significantly to the sylvan amenity of the area and is currently only partly protected by TPO 4 of 1974. Therefore, in order to secure the entire woodlands long-term retention, it is considered expedient to revoke the current TPO and to replace it with a new order that encompasses the entire wood.

A copy of TPO No. 6 of 2018 is attached as an appendix to this report.

1.02 Blean Wood is designated as ancient woodland consisting mainly of mixed deciduous species of standards over traditional coppice, and as such is considered to be an important sylvan asset to the local area.

2.0 OBJECTIONS

2.01 Two objections to the TPO were received, one from Mount Ephraim Estate and the other from the owner of Little Miss Acres Farm, Butlers Hill, Dargate. Following consultation with the Council's Tree Consultant, Mount Ephraim Estate have since revoked their objection, leaving only the one objection from the owner of Little Miss Acres Farm, the full text of which is replicated below.

A summary of the grounds of the objection are as follows:

- It is privately owned land and imposing such an order significantly devalues the land;

- It is unfair that such an order can be placed on the land without consultation with the land owners; and
- The order will prohibit management of the wood and having to apply every time increases workload and costs.

3.0 APPRAISAL

3.01 In response to the objections raised in this case, I would say;

- The objection is not supported by any evidence to suggest its imposition could or will devalue the objector's land.
- Consultation with landowners prior to the serving of a TPO is rarely undertaken, as to do so, could lead to pre-emptive felling before the TPO served. However, the TPO legislation does allow the affected landowners to object or make comment on the order with 28 days of its serving. This provides all affected parties the opportunity to voice their concerns and objections before the TPO is confirmed.
- Under the current TPO legislation, the serving of an order is not to prevent or impede the landowner from carrying out appropriate land management that is in the interests of sound arboricultural management. Applications to coppice and manage woodland are actively supported by the Council and when appropriate the Council can provide free pre-application advice. All tree applications submitted to the Council are currently free of charge, so there are no added financial costs to the applicant.

3.02 Having considered the objections raised above, on balance, they are not considered to be robust enough to question the validity of the TPO.

4.0 RECOMMENDATION

4.01 That the Planning Committee confirm, without modification, Tree Preservation Order No.6 of 2018

FULL TEXT OF LETTER OF OBJECTION

Dear Whom It May Concern.

I write with reference to Tree Preservation Order No. 6 of Blean Wood, north of Dawes Road. I wish to object to the proposed preservation order on the grounds that this is privately owned land and imposing such an order significantly devalues this land. Having only purchased an area of this woodland two years ago with no preservation order on it, I believe it unfair that such an order can be placed without consultation with the land owners. If it were council owned land then I would not have a problem. Such an imposition should be accompanied with compensation to the land owners.

I own some of the adjoining agricultural land and the trees at the boundary require maintaining to prevent too much overhang causing loss of production from the land but also to be able to maintain the drainage ditches and boundary fencing.

The woodland itself is overgrown and needs managing effectively for its long term health. To have to apply to do this increases workload and costs involved. Why is there a preservation order being placed on every species of tree in this mixed wood?

Coppicing, topping and lopping should be permitted to protect its health and allow new growth and replanting to take place.

I hope my comments are taken into consideration before implementing such an unfair enforcement order.

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PLANNING COMMITTEE – 30 May 2019**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO - 18/506323/FULL

APPLICATION PROPOSAL

Retrospective application for the stationing of 37 static caravans including associated hardstanding and landscaping.

ADDRESS

Meadow View Park Irwin Road Minster-on-sea Sheerness Kent ME12 2DB

RECOMMENDATION

Grant subject to conditions.

SUMMARY OF REASONS FOR RECOMMENDATION

Application would regularize use of the site for static caravans without giving rise to any serious amenity concerns.

REASON FOR REFERRAL TO COMMITTEE

Parish Council objection.

<div>WARD</div> <div>Minster Cliffs</div>	<div>PARISH/TOWN COUNCIL</div> <div>Minster-On-Sea</div>	<div>APPLICANT</div> <div>Mr Henry Boswell</div> <div><div>AGENT</div><div>Michael Parkes</div><div>Surveyors</div></div>
<div>DECISION DUE DATE</div> <div>06/03/19</div>	<div>PUBLICITY EXPIRY DATE</div> <div>24/01/19</div>	

RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):

App No	Proposal	Decision	Date
SW/12/0679	Variation of conditions (2) and (6(2)) of planning permission SW/05/0715 to remove touring caravan provision, and reduce the total number of caravans permitted from 43 to 37.	Not proceeded with.	
This application was identical to the current application. It was not determined by the Council and not pursued by the applicant until earlier this year when they sought to regularise the number of static caravans to facilitate sale of the land. The drawings were significantly incorrect, however, such that a new application (the current application) was required and as such this application has been superseded.			
SW/06/0764	20 semi-detached holiday chalets with associated parking.	Withdrawn	24.3.09
Application was withdrawn.			
SW/05/0715	Change of use of land to static holiday caravan site.	Certificate issued	03.04.92

Members determined that use of the land as a static caravan park, with restricted occupancy, was preferable to unrestricted use as a touring and camping site.			
SW/92/0136	Lawful Development Certificate for unrestricted touring caravan and camping site.	Granted	15.12.92
Evidence was provided to demonstrate that touring caravans had been occupying the site in breach of the original occupancy conditions (set by SW/82/0850), thereby allowing touring caravans to use the site 12 months of the year. On the basis of this evidence a Certificate was issued allowing unrestricted occupancy of the site by touring caravans.			
SW/82/0850	Change of use from sewage plant to touring caravan and camping site	Granted	30.04.2007
Use of the land as a camping and caravanning site would provide a useful tourist facility and would represent an improvement to the character and appearance of the area.			

1.0 DESCRIPTION OF SITE

- 1.01 Meadow View Park (formerly known as Riverbank Park) is a static caravan park situated off The Broadway to the north of Minster. The site is accessed via a private road (Irwin Road) which serves a wider complex of holiday accommodation, including Parklands Village immediately to the north of Meadow View, Minster Park beyond that, and the Abbey Hotel which fronts onto the main road. Parklands and Minster Park comprise brick-built chalets.
- 1.02 The site is generally flat and level, and contains a number of static caravans with grass lawns between the pitches and several empty plots that have not yet had caravan bases laid out. The site is within flood zone 3, and the Minster marshes lie immediately to the south and west, with a drainage ditch running along the southern site boundary.
- 1.03 The site lies within land formally designated by the adopted Local Plan for holiday park use, and has been in use as a caravan site since the early '80s (as set out above).

2.0 PROPOSAL

- 2.01 This application seeks planning permission for the siting of 37 static caravans on the site, some of which are already in place.
- 2.02 This would be as an amendment to planning permission SW/05/0715 which granted consent for a total of 43 caravans on the site, of which a maximum of 31 could be static caravans, leaving a designated area for up to 12 touring caravans. The agent's covering letter explains:

"This is a slight variation from the approved application in 2005 (SW/05/0715) which allowed for the stationing of 43 caravans on the site, of which at least 12 are to be for touring caravans. The spacing has been adjusted to reflect the reduction in the number of units."

- 2.03 The area previously approved for touring caravans was along the north-eastern edge of the site, along the common boundary with the rear gardens of the chalets on Niwrim Way. This area has not been used for touring caravans for several years, however, and the layout applied for has effectively been in place since 2012.

- 2.04 This application therefore seeks to *reduce* the total number of caravans permitted on the site from 43 to 37, all of which would be static caravans.
- 2.05 The static caravans are / will be laid out as shown on the submitted layout plan. Concrete bases have been installed (or will be installed on the remaining vacant pitches once permission is granted), and the internal estate road is laid out as shown on the submitted plan. Each caravan has a small grass amenity area surrounding it and a private parking space. Further shared amenity space and parking is available across the wider site.

3.0 SUMMARY INFORMATION

	Proposed
Site Area (ha)	1.41
Total no. approved caravans	43
Total no. proposed caravans	37

4.0 PLANNING CONSTRAINTS

- 4.01 The site is within an area of Potential Archaeological Importance, Flood Zone 3, and a holiday park allocation (under policy DM4

5.0 POLICY AND OTHER CONSIDERATIONS

- 5.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) generally support proposals that would support tourism and economic development, subject to consideration of issues such as flood risk and general amenity.
- 5.02 Policies ST1 (sustainable development), CP1 (strong, competitive economy), CP4 (good design), DM3 (rural economy), DM4 (holiday parks), DM5 (holiday park occupancy), DM7 (parking), DM14 (general development criteria), and DM21 (water, flooding, and drainage) of the adopted Swale Borough Local Plan 2017 are relevant.
- 5.03 In particular: policy DM4 allows for upgrading and improvement of existing static caravan holiday parks; while policy DM5 sets out that the occupancy of parks will be restricted to a maximum of 10 months.

6.0 LOCAL REPRESENTATIONS

- 6.01 Four letters of objection have been received from occupants of chalets on the adjacent Irwin Park, raising the following summarised issues:
- The field is not big enough to contain the number of proposed caravans;
 - A boundary fence was removed and trees cut down, enabling caravans to be situated closer to the common boundary with Niwrim Way;
 - Unauthorised alterations and additions to some of the caravans, including raised decking;
 - Overlooking and loss of privacy;
 - Additional traffic and vehicle movements;
 - Additional noise and disturbance from extra caravans;
 - Potential for anti-social behaviour;
 - Impact on wildlife from removal of trees;

- The plan approved in 2005 has not been adhered to [NB: the point of this application is to regularise that situation];
- Delays in the Council determining previous applications at the site;
- Loss of privacy from CCTV at the site [NB: the CCTV poles were removed some months ago], and
- Comments on a previous, now withdrawn, application at the site.

6.02 The applicant has submitted a letter rebuffing a particular objector's comments, but it does not contribute to the consideration of the matter at hand.

7.0 CONSULTATIONS

7.01 Minster Parish Council objects to the application, commenting that *"this is over-intensive use of the site"* and *"the proposal's close proximity to existing dwellings is a concern"* with regard to the orientation of the static caravans and the potential for overlooking and loss of privacy for the chalets.

7.02 Natural England initially requested further information in respect of potential ecological impacts. However further to discussions with their officers to explain the nature of the application (i.e. a reduction in caravans) they have confirmed they have no objection.

7.03 The Environment Agency has no objection.

7.04 KCC Flooding has no objection, but notes that a nearby ditch is maintained by the LMIDB and as such consent will be required if the applicant seeks to discharge water into it.

7.05 The LMIDB note that the drainage ditch along the southern site boundary is maintained by them and, as such, their consent will be required for any works within 8m of the ditch or to drain the site into it. Given the nature of this application I don't consider that a condition is reasonable or justified in this instance, but will add their comments as an informative for the applicant to act on should they wish to carry out any works that affect the ditch.

7.06 Southern Water has no objections but notes that sewer infrastructure will require upgrading, and has requested a number of conditions (discussed below).

7.07 KCC Highways has no objections.

7.08 Kent Police suggest that the applicant should contact them to discuss possible Secured By Design (SBD) improvements to the site.

7.09 The Council's Environmental Health Manager has no comments.

8.0 BACKGROUND PAPERS AND PLANS

8.01 The application is supported by a proposed layout plan, and the above-noted historic applications are relevant.

9.0 APPRAISAL

Principle

- 9.01 The site lies within a designated holiday park area, as set out by Policy DM4 of the adopted Local Plan. The principle of development that supports the wider tourism aims of that policy is therefore generally acceptable subject to amenity considerations as set out below.
- 9.02 Because the site is providing holiday accommodation; the principle of permanent residential use not being acceptable here due to flood risk; the allocation of the site as a holiday park under policy DM4; the site lying outside of the defined built up area boundary; and the potential for holiday parks to provide sub-standard permanent homes, a standard condition is required to restrict occupancy as with the other holiday parks on the Island.

Amenity

- 9.03 It should be clearly stated that the chalets on Niwrim Way are holiday residences, and *not* residential dwellings. I have spoken to a number of occupants of Niwrim Way during the course of dealing with other applications locally, and while I appreciate that they consider these chalets to be their primary residence it must be made absolutely clear to all that they are *not* residential dwellings. The Council has won many appeals against use of these chalets as permanent dwellings, of which the residents should be aware, and the established position (through Council-issued planning decisions and Planning Inspectorate appeal decisions) is that they are holiday chalets with 10 month occupancy.
- 9.04 The chalets on Niwrim Way – and the static caravans here at Meadow View - therefore benefit from a lower degree of amenity protection under planning regulations and the issue of potential overlooking is much less heavily weighted. While you would not expect to be overlooked at close proximity in the lounge of your “normal” house, one does not normally expect the same privileges on close-quarters holiday camps. Therefore, whilst I note the objections from residents and the Parish Council in respect of overlooking and loss of privacy, I am firmly of the opinion that is not a matter on which a reasonable, justifiable, and defensible refusal of planning permission could be considered here.
- 9.04 The layout of the park provides good spacing around the caravans and there is communal open space for all visitors. The park will provide a good level of amenity for occupants of the caravans, in my opinion.
- 9.05 Removal of the touring caravan spaces means that there would be less manoeuvring of vehicles on the site and fewer vehicles accessing the park on a regular basis. This would consequently reduce associated noise and disturbance and improve amenity for occupiers of both this park and the adjacent chalets.

Layout

- 9.06 The site is capable of holding 37 caravans. I have visited the site and, whilst not all of the pitches have been built out yet, it is evidently open and well spaced. To receive a site licence from the Council the caravans must be at least 6m apart in all directions and there is more than enough space available to achieve this on site, as well as providing appropriate levels of shared amenity space, parking provision, and vehicle access/turning space.

- 9.07 In this regard I disagree with the Parish Council and local residents suggesting that the scheme would represent overdevelopment of the land. I consider that there is evidently sufficient space to provide a well-spaced static caravan site here, even with additional statics on the former touring caravan spaces, and I do not consider that the Council would in any way be able to defend a reason for refusal on such grounds at appeal.

Highways

- 9.08 I note that KCC Highways have no objections, and I also have no significant concerns in respect of highway safety or amenity. The loss of touring caravan spaces is likely to result in fewer vehicle movements than under the current extant permission.

Ecology

- 9.09 Because the application proposes a *reduction* in the total number of caravans allowed on the site I do not consider that the development would give rise to any additional ecological impacts over and above the current permission/lawful use of the site. Because no additional accommodation is being proposed there is no requirement for a SAMMS payment in this instance.

Other

- 9.10 Southern Water has requested conditions to secure a phased implementation of the permission to align with potential future upgrade works to the local sewer network. I do not consider these conditions to meet the Government's tests in respect of planning conditions, however, because i) there is an extant, implemented permission for use of the site without phasing restrictions, ii) such conditions would make the applicant entirely beholden upon works to be carried out by a third party, and iii) Southern Water do not have a firm timescale for any upgrade works, so the applicant could potentially be left unable to implement their permission for many years. Of these three issues, however, the fact that the site is already in use under an implemented planning permission means that there is no recourse for Southern Water to now restrict occupancy of the site, and I believe that a planning Inspector would look very poorly on a condition which seeks to do so.

10.0 CONCLUSION

- 10.01 This application seeks retrospective consent for replacement of a dedicated touring caravan area with static caravans, and to *reduce* the total number of caravans permitted on an existing approved caravan site from 43 to 37. Whilst I note local and Parish Council objections I can see no justifiable reason to refuse planning permission, and do not consider that the proposals would give rise to any serious impacts over and above the existing approved use of the land.

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

11.0 RECOMMENDATION – GRANT Subject to the following conditions:

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

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

- 2) No more than 37 caravans shall be stationed on the site at any time, and none shall be stationed in a position other than securely anchored to one of the concrete bases shown on the drawings approved under this permission.

Reason: In accordance with the terms of the permission, and as the site is prominently located in a wider rural location where uncontrolled development would be likely to be harmful, and as the site is at risk from flooding, pursuant to policies ST1, ST3, ST6, DM5, and DM14 of the Swale Borough Local Plan 2017.

- 3) The caravans hereby permitted shall only be occupied during the period from 1st March to 31st October in any year, and the caravans shall not be used for human habitation at any time during the months of November to February inclusive; all power, including lighting, shall be cut off during this 'closed season'.

Reason: The proposed development, by its nature and location, is unsuitable for all year round occupation and subject to flood risk. Moreover, the site is prominently located in a wider rural location where both the character and appearance would be detrimentally changed by activity and lighting in the quiet winter months, in pursuance of policies St1, DM5, and DM14 of the Swale Borough Local Plan 2017.

- 4) Within 6 months from the date of this permission 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.

INFORMATIVES

1. Kent Police recommend that the site owner contact their Designing Out Crime officer (pandcr@kent.pnn.police.uk) to discuss potential improvements to the security and safety of the site.
2. A formal application for connection to the water supply is required in order to service this development. Please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk.
3. The watercourse on the southern boundary of the site is a Lower Medway Internal Drainage Board maintained ditch, and as such section 66 of the Land Drainage Act

1991 applies, and the Board's consent is required for any works, structure, planting or fencing within 8m of the ditch.

The Board suggests the applicant seeks to get this approval as soon as possible.

Any surface water drainage from the site discharging to a local watercourse also requires attenuating to 7 litres/sec/hectare for the 1:100 year storm (+40% cc). Again this will require the Board's written consent to allow this and fines and court action can apply should the Board's permission not be sought.

Consent application forms can be found on the Board's website www.medwayidb.co.uk.

THE COUNCIL'S APPROACH TO THIS APPLICATION

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

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

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

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



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2.2 REFERENCE NO - 19/500050/FULL & 19/500051/LBC

APPLICATION PROPOSAL

Conversion, part demolition and extension of former school building to provide two 4 bedroom dwellings, and erection of two detached 4 bedroom dwellings with associated landscaping and parking.

ADDRESS Tunstall Church Of England Primary School Tunstall Road Tunstall Sittingbourne Kent ME9 8DX

RECOMMENDATION Grant planning permission subject to a Strategic Access Management and Monitoring Strategy (SAMMS) contribution and listed building consent.

SUMMARY OF REASONS FOR RECOMMENDATION

In the absence of a full five-year supply of housing land, and as the site is in a fairly sustainable location, on balance, the proposal is considered to be acceptable

REASON FOR REFERRAL TO COMMITTEE

Parish Council Objection

WARD West Downs

PARISH/TOWN COUNCIL Tunstall

APPLICANT Mr G Swift

AGENT Penshurst Planning Ltd

DECISION DUE DATE 11/03/19

PUBLICITY EXPIRY DATE 15/02/19

OFFICER SITE VISIT DATE 22/01/19

RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):

App No	Proposal	Decision	Date
18/500738/FULL & 18/500739/LBC	Conversion of former school building to provide three dwellings with associated demolition/building works, internal and external alterations, provision of additional floorspace at first floor level, including three dormer windows, landscaping, and car parking	Approved	30.05.2018
17/502970/FULL & 17/502971/LBC	Part demolition and part rebuilding of former school building, conversion with first floor extension to create two 4 bedroom dwellings, together with the erection of two detached 4 bedroom dwellings, with associated landscaping, including removal of three trees and parking.	Withdrawn	13.02.2018

1.0 DESCRIPTION OF SITE

- 1.01 The property is the former Church of England Primary School, situated within the village of Tunstall. It is a grade II listed building, constructed in 1846, which still displays an impressive and attractive façade, finished in brick and flint, representing the original school building. In contrast, the inside of the original part of the building is disappointingly devoid of any interesting or historical architectural features, which appear to have long since been removed.
- 1.02 To the rear of the building a number of less sympathetic extensions were added to the building in the latter half of the last century. Whilst these changes have perhaps not

been made in a manner totally sympathetic to the original building, they clearly mark the two ages of the school.

- 1.03 To the rear of the building itself is a fairly large area of land, a lot of it given over to hard surfacing, which served as recreation space and parking for the school, where portable classrooms once stood. The area at the rear of the property is accessed by a single track driveway, and I understand that a number of parties enjoy access rights over this land, which also forms a public right of way. I understand that this route was used by staff cars when the school was in use as such. Behind the site lies Tunstall village hall, a fairly modern hall surrounded by attractive grounds and generous parking provision, accessed separately from another direction.
- 1.04 The site is located outside of any established built-up area boundary; within the Tunstall conservation area, and near to other listed buildings.
- 1.05 Following the erection of a new school elsewhere the site has been acquired by the current applicant and planning and listed building consent applications were received in 2017 for the conversion of the school to two properties, and for the construction of two new detached four bedroomed houses at the rear. As this latter part of the proposal would have caused the application to fail at that time, as the Council had a 5.4 years supply of building land following adoption of the Local Plan in 2017, those applications were withdrawn by the applicant (17/502970/FULL & 17/502971/LBC).
- 1.06 Following the withdrawal of these applications, new proposals for just the conversion of the existing building to three new dwellings, with no new build element, were submitted (18/500738/FULL & 18/500739/LBC) and approved by the Planning Committee in May 2018. None of this work has yet commenced.

2.0 PROPOSAL

- 2.01 Although the 2018 applications noted above were approved without any new build element, the applicant is now applying for conversion of the former school building to two dwellings and for the erection of two new dwellings at the rear. The current proposal is thus for the conversion of the former school building to two four bedroom houses (involving removal of more recent rear extensions and their replacement with smaller, more sympathetic extensions), and for the erection of two new four bedroom detached houses at the rear, both to the same design each with an integral single garage.
- 2.02 Each property would have its own amenity space, and at least two parking spaces in addition to the integral garages. The parking spaces are shown to the rear of the existing building with no parking on the front lawn of the former school. Parking areas would be accessed by the existing track which previously served as vehicular access to the rear of the building. This track also forms part of Public Right of Way ZR147, and I understand that a number of local people also have vehicular access rights across this land. The school originally had fifteen vehicle parking spaces to the rear; the proposal now is for ten plus two garages.
- 2.03 The application is accompanied by a Planning Statement; a Heritage Statement; an Ecological Appraisal; a Viability Report and an Arboricultural Survey. The Planning statement explains how the applicant has arrived at this proposal and the Heritage Statement discusses the effect of the proposal on the character and setting of the listed building. The Viability Report is a lengthy report arguing the case for four dwellings, rather than three. This statement will be discussed later in this report.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.31h	0.31h	-
No. of Storeys	2	2	-
Parking Spaces	15	10 (plus garages)	-5 (-3)
No. of Residential Units	Nil	4	+4

4.0 PLANNING CONSTRAINTS

Conservation Area Tunstall

Listed Buildings SBC Ref Number: 1115/SW

Description: G II TUNSTALL C E PRIMARY SCHOOL, TUNSTALL

Outside established built-up-area boundary.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 National Planning Policy Framework (NPPF): Paragraphs 8 (sustainable development); 11 (The presumption in favour of sustainable development); 55 (re-use of redundant buildings); 77 – 79 (Rural housing); 131 (creating sustainable uses for heritage assets); and 132 (significance of designated heritage assets) are relevant to this proposal.

5.02 Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (delivering sustainable development in Swale); ST3 (the Swale settlement strategy); CP4 (requiring good design); CP8 (conserving and enhancing the historic environment); DM7 (vehicle parking); DM14 (general development criteria); DM16 (alterations and extensions); DM32 (listed buildings); and DM33 (conservation areas).

5.03 The site does not lie within the “Important Local Countryside Gap” between Siittingbourne and Tunstall as protected by policy DM25.

6.0 LOCAL REPRESENTATIONS

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

- Danger from cars turning into access to rear
- Visibility from access is poor
- Design of new houses out of keeping with rural setting
- Four bedroom properties not necessary – smaller units are needed
- Emergency vehicles would have difficulty accessing rear properties
- *‘The driving force behind this plan is financial gain’*
- Intensification of vehicle use; when the area to the rear was used as a parking area for the school, vehicle movements were only at the start and end of the school day
- Tunstall Lane is a ‘rat-run’ to the motorway
- Previous applications to KCC for school parking were refused
- Number of parking spaces is insufficient
- Two new dwellings detrimental to setting of the listed buildings nearby
- Loss of countryside gap

- Application made as previous application was 'not financially viable'. Did the applicant not realise this before?
- Plot size slightly reduced compared to that previously approved
- Where will rubbish bins be stored?
- Removal of existing trees is unacceptable
- Remote access gate will cause problems – difficult to access; noise, etc.

One email of support has been received from a local resident:

- The retention of the school building, minus the existing rear extensions will be of great benefit to the conservation area
- The expense of converting the listed building justifies the two new builds
- Will assist in meeting Swale's required housing targets
- KCC Highways conditions must be included
- *'My concern is that without the financial assistance that the two new houses will bring to the development, the old school building will continue to deteriorate to a stage where its retention comes into question'*

6.02 The applicant has responded to the representations in the following manner;

- The highways issues and those of the PROW have already been considered and approved under the previously approved applications (18/500738/ FULL and 18/500739/LBC)
- A Construction Management plan has already been approved for the applications noted above
- Scheme meets Kent Vehicle Parking Standards
- *'Given the extensive modern rear extension is to be demolished, the site is considered to be suitably spacious to accommodate the two proposed detached dwellings. The density of development has increased slightly, due to the goodwill sale of a small strip of land to the owners of the neighbouring property 'The Oast' to facilitate rear access to their property'*
- The proposal is not in open countryside, it is in fact in-fill development
- The proposal will improve the character and setting of the listed building by removing the existing 1970s large extensions to the rear
- The proposed scheme complies with Technical Housing Standards
- The loss of two trees will be replaced by new planting
- *'The revised application is not about increasing profits, but rather seeking approval for a scheme that is financially viable and capable of implementation, thereby ensuring the current listed building is brought back into long term beneficial use'*
- This will not set a precedent; every proposal is judged on its own merits

7.0 CONSULTATIONS

7.01 Tunstall Parish Council raises objection to the proposal. Their comments are as follows:

'Councillors have considered the application and have voted to oppose the proposal for the following reasons:

1) Whilst the Parish Council is keen to see the old school site developed, it is in the Conservation Area and it is important that any development is sensitive to this. The site is located outside any established built-up area boundary, where policies of rural restraint apply. Policy ST3 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 states that; At locations in the open countryside, outside the built-up area boundaries

shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. The proposed two new build properties would not be in accordance with this policy.

2) Access and egress. The Parish Council recognises the current proposed route is already in use by two properties and for access to surrounding farm land and that many more cars used it when the school was operational although this would have been at the start and end of the school day. The proposed extra dwellings will result in traffic accessing and egressing the site throughout the day as well as deliveries. There is insufficient parking for delivery drivers and visitors who will have to park in the layby opposite or on the road. The sight lines and lighting are poor and the proposed access needs to be thoroughly risk assessed.

3) Public Right of Way. The Parish Council would like to draw attention to the safety of the site access keeping in mind a previous application for a new car park was refused due to such concerns. The proposed vehicular access to site is a Public Right of Way and walkers could be put in danger as a result of the extra vehicular movements from the development.

4) The proposal is an erosion of the Strategic Countryside Gap

5) The removal of mature trees within the site is unnecessary for the previous proposal that has been accepted, whereas this proposal will require the mature trees to be removed

6) The proposal will result in over intensification of the site.'

7.02 Historic England raises no objection.

7.03 Natural England raises no objection subject to mitigation relating to SAMMs payments.

7.04 The KCC Public Rights of Way Officer notes that;

'Public footpath ZR147 passes along the proposed vehicular access to the site...There are no public vehicular access rights along the footpath. The applicant should satisfy themselves that should consent be granted the relevant permissions are in place to enable vehicular access to the properties.'

7.05 The Swale Footpaths Group notes use of the access as a public footpath and seek to ensure that walkers are not obstructed or endangered during building works, or afterwards.

7.06 Kent Highways and Transportation raises no objection, subject to the inclusion of conditions and an informative. One Condition requested was for a dedicated pathway to bring refuse bins to the proposed bin collection area at the front of the site. I do not consider this will be in the interests of the character and setting of the listed building, so have not included this particular condition, and that the details shown on drawing no. SW/16/147.03C are acceptable.

7.07 The Council's tree consultant raises no objection, subject to conditions included below.

8.0 APPRAISAL

- 8.01 The main issues to consider are those of the principle of development; issues relating to the adjacent public right of way and highway safety, and other matters. For the sake of regularity, I will take these points in turn
- 8.02 Principle of Development – As noted above, the site is situated outside any established built-up area boundary, where policy ST3 of the Local Plan would normally act to restrict new residential development to ensure a sustainable pattern of development. The site is not allocated for housing within the Local Plan. If the Council still had a five year supply of housing land, it is likely that an application for two new dwellings outside the built up area boundary would be refused.
- 8.03 However, the Council has, at present, only a 4.6 year supply (as determined by the recent Housing Delivery Test (HDT)). Whilst this is not a sizeable shortfall, paragraph 11 of the NPPF means that policies for the provision of housing are considered out of date and this weakens the Council's position with regard to the matter of new dwellings outside the established built-up area boundary. In such cases, the sustainability of the site's location should be considered paramount. In this context the site is not isolated and is situated approximately a quarter of a mile outside the established built-up area boundary, within walking distance of the new Primary School, with the Village Hall adjacent to the site. Local shops at Northwood Drive are less than a mile away, and Sittingbourne town centre is less than two miles away with pavements allowing access by foot. Equally importantly, the site is not situated within the Local Plan defined Important Local Countryside Gap, which is meant to prevent the coalescence of Tunstall and Sittingbourne via policy DM25. I consider the location of this previously developed site to be one where it would be hard to suggest that housing here would not be sustainable development.
- 8.04 Since the HDT ruling, the Council has still been able to successfully defend against appeals for housing in the countryside, but these successful defences have been in locations which were very isolated and unsustainable, with no access to public transport; no facilities locally, and where all access would have to be by car. None of these characteristics apply in this case. As such, I am of the opinion that if this proposal were to be refused and subsequently appealed, there is a strong possibility that such an appeal would be upheld.
- 8.05 As such, under these very particular circumstances, I consider that the principle of development here is acceptable.
- 8.06 Issues relating to the adjacent public right of way and highway safety concerns - A number of local residents have voiced concerns with regard to the use of the vehicle access route which is also a public right of way. Whilst I understand those concerns, these matters were analysed as part of the previous applications (18/500738/FULL & 18/500739/LBC). On that occasion, Members took the view that the highway and safety aspects of the proposal were acceptable. In highway terms, the only difference between that proposal is that the present proposal is for four properties, not three. The extra property would not have a significant impact on highway or safety matters and, as such, I am of the opinion that the proposal is also acceptable on these grounds.
- 8.07 I note that there are no public rights of way for vehicular use of the access track. However, this is not a planning matter and the applicant will need to satisfy himself that he has the right of access to the site.
- 8.08 Other Matters – In terms of the effect upon the listed building and conservation area, the removal of the existing circa late 1970s extensions, to be replaced with extensions

of much more sympathetic design, is to be supported. With regard to the proposed new houses, though they are not small properties, their design, incorporating features found in the listed building, such as the flintwork panels, would not have an adverse effect upon the character or setting of the listed building. As such, I consider this part of the proposal to be acceptable.

- 8.09 A number of objectors have suggested that the proposed development would constitute an over-intensive use of the site. With a density of approximately twelve dwellings per hectare, which would be broadly in line with existing residential development in Tunstall, the density levels could be described as 'low', particularly when remembering that larger, edge of town developments regularly have a density of between thirty and fifty dwellings per hectare.
- 8.10 Finally, with regard to the impact of the two new dwellings upon the listed building and the conservation area, I would note that the two new dwellings are set an acceptable distance away from the listed building; that the dwellings are designed to be sympathetic to their location; and that as they are set back, they would not have any impact upon the streetscene. I am therefore of the opinion that the proposed development would not have a detrimental impact upon the character and setting of the listed building or on the appearance of the surrounding conservation area.

9.0 CONCLUSION

- 9.01 In view of the fact that the Council no longer has a five year supply of housing land; as the site is in a fairly sustainable location; and as this proposal represents a net increase of a single property over that already granted, I recommend that the proposal be approved, subject to strict accordance with the conditions noted below.

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.

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.

In this case the applicant has agreed to pay the SAMMS contribution, if the proposal is approved, and any decision to approve the application will need to be subject to planning permission and building consent being granted.

10.0 RECOMMENDATION – GRANT planning permission and listed building consent subject to receipt of appropriate SAMMS payment and to the following conditions:

CONDITIONS

19/500050/FULL – Planning Permission

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

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

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

Reason: In the interest of conserving the character of the conservation area and the setting of the listed building.

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

Reason: In the interest of conserving the character of the conservation area and the setting of the listed building.

- (4) No development beyond the construction of foundations shall take place until full details at a suggested scale of 1:5 of the eaves of the new build dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

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

- (5) No development beyond the construction of foundations shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. measures to control the emission of dust and dirt during construction
 - v. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

- (6) 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.

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

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

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

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

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

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

- (10) In this condition "retained tree" means an existing tree, which is to be retained in accordance with the approved plans and particulars. Paragraphs i) and ii) below shall have effect until the expiration of 5 years from the date of completion of the development for its permitted use.
- i) No retained tree shall be damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the Arboricultural Tree Survey Report (ref:1589) dated 11/05/2017, without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations or any revisions thereof.
 - ii) If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.
 - iii) The installation of tree protection barriers, the methods of working shall be undertaken in accordance with the Arboricultural Tree Survey Report (ref:1589) dated 11/05/2017

Reason; in order to protect and enhance the appearance and character of the site and locality,

- (11) The areas shown on approved drawing SW/16/147.03C as parking spaces shall be kept available for such use at all times and no permanent development, whether permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwellings hereby permitted.

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

- (12) No development beyond the construction of foundations shall take place until details of covered cycle storage for each property shall be submitted to and approved in writing

by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved details.

Reason: In the interests of promoting sustainable means of travel.

- (13) No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

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

- (14) 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.

- (15) Upon completion, no further development to the front elevations of the new build dwellings hereby approved, whether permitted by Class D of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interests of the amenities of the area and the setting of the listed building.

- (16) This permission shall be an alternative to the permission(s) granted on 30/05/2018 under references 18/500738/FULL and 18/500739/LBC and shall not be in addition thereto, or in combination therewith.

Reason: The exercise of more than one permission would result in an over intensive use of the land.

Council's approach to this application

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

In this 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.

CONDITIONS**19/500051/LBC – Listed Building Consent**

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

Reason: In pursuance of Section 18 of the Listed Building Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) No development shall take place until details in the form of samples of external finishing materials to be used in the development hereby approved have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- (3) All new external joinery shall be fabricated in timber, and no development shall take place until detailed drawings at a suggested scale of 1:5 of all new external and internal joinery work and fittings together with sections through glazing bars, frames and mouldings have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (4) No pipework, vents, ducts, flues, meter boxes, alarm boxes, ductwork or other appendages shall be fixed to the exterior of the listed building the subject of this consent without the prior written consent of the Local Planning Authority.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (5) All rainwater goods to be used as part of the development hereby permitted shall be of cast iron.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (6) Before the development hereby permitted is commenced, a detailed schedule of works shall be submitted to and agreed in writing by the Local Planning Authority before any works commence. This schedule of works shall be discussed and informally agreed with the Local Planning Authority's Conservation & Design Manager on site, and then formally submitted in writing for formal approval by the Local Planning Authority. The schedule shall include details of repairs to be carried out (including any re-pointing), the removal of redundant wiring/cabling/pipework and modern insertions, including wall and floor finishes, suspended ceilings and radiators, etc. The schedule must include a timetable for the start and estimated completion of each item of work, and include inspection slots at appropriate intervals to allow the Local Planning Authority's Conservation & Design Manager to properly monitor the standard of work being undertaken on the listed building.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (7) Before the development hereby permitted commences, drawings at 1:10 elevation and 1:1 or 1:2 part vertical and part horizontal section of each new/replacement window (including dormer windows) and door type (including for internal doors) shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved drawings.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (8) Before the development hereby permitted commences, drawings at 1:10 elevation detail (side and flank) of the proposed dormers shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved drawings.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (9) Before the development hereby permitted is commenced, manufacturer's details and specification of the exact Conservation roof lights to be used in the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in complete accordance with these approved drawings.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (10) All making good works to the listed building (including its modern rear extension) shall be carried out using matching finishes and materials (including colour finish), unless otherwise specifically previously agreed in writing with the Local Planning Authority.

Reason: In the interest of the special architectural or historic interest of the listed building.

- (11) Before any works are commenced, a detailed schedule of repairs and necessary remedial works to the listed building (as identified by the project architect or building surveyor) shall first have been submitted to, and approved in writing by the LPA. The schedule of repairs and remedial works to the listed building shall be drawn up drawing in accordance with the guidance and building conservation objectives set out in the British Standard document entitled Guide to the conservation of historic buildings (BS 7913: 2013). Thereafter, all of the works listed in the schedule shall have been carried out and completed (and the LPA notified of this immediately in writing thereafter) before the new residential conversion units within the listed building are first occupied.

Reason: To protect the special character, architectural interest and integrity of the listed building, in accordance with the requirements of Section 16 of the Planning (Listed Buildings and Conservation Areas) Act, 1990.

INFORMATIVE - The Local Planning Authority recommends that the schedule of works is drawn up by a competent conservation accredited architect and/or building surveyor/structural engineer. Details of the conservation accreditation schemes for architects, engineers and surveyors can be found on page 31 of the British Standard document referred to in the corresponding planning condition.

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 - 18/506384/FULL			
APPLICATION PROPOSAL Change of use of land and development of 34no. general industrial units, a secure lorry park, cafe and associated landscaping. (Resubmission of 18/504147/FULL),			
ADDRESS Land South East Of A299 Slip Road Off Thanet Way Highstreet Road Hernhill Kent ME13 9EN			
RECOMMENDATION Grant, subject to conditions as set out below and the further views of KCC Highways and Transportation, and Highways England, and the receipt further comments following re-consultation (closing date 29 th May 2019)			
SUMMARY OF REASONS FOR RECOMMENDATION/ Proposal is broadly in accordance with national and local planning policy			
REASON FOR REFERRAL TO COMMITTEE Parish Council and local objections			
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Hernhill	APPLICANT P&S Properties Services (South East) Ltd AGENT Giarti	
DECISION DUE DATE 21/03/19	PUBLICITY EXPIRY DATE 01/02/19	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
18/504147/FULL	Change of use of land and development of 43no. general industrial units, a secure lorry park, cafe and associated landscaping.	Withdrawn	29/11/2018
15/505213/FULL	Part retrospective application for the importation of waste material and engineering operations to form landscape bunds, construction of a 3 metre high Gabion basket stone wall, change of use of land and construction of van and HGV lorry park, access and construction of a roadside transport cafe for A3/A5 uses plus 24 hour WC and driver wash	Approved	30/11/2016

1.0 DESCRIPTION OF SITE

- 1.01 The site is located on a vacant parcel of land on the south-east side of the A299 Thanet Way at the Dargate interchange, north east of Plumpudding Lane, and to the north-west of the slip road to the A299, which as Members may be aware is part of the local road network maintained by KCC Highways and Transportation. The site extends to 1.2 hectares and is presently a cleared site. It is partly bounded by trees and vegetation to the northwest side adjacent to the Thanet Way. The northeast part of the site is visible from the highway, and there are existing bunds on these sides of the site, as well as to the southeast.

- 1.02 Directly to the southeast of the site is an existing business park and freight terminal. A short distance to the north of the site on the coast bound carriageway there is an established petrol filling station, a shop, a Travelodge and a café. On the London bound carriageway there is another filling station and a coffee shop.
- 1.03 The site slopes downward from the southwestern end to the northeastern end, in two distinct but separate gradations. A drawing is included within the application showing these changes of levels.
- 1.04 To the northeast of the site, on Highstreet Road and Dargate Road, there are a number of residential properties.
- 1.05 An application for a change of use of the land and construction of a van and HGV lorry park, access and construction of a roadside transport cafe for A3/A5 uses plus a 24 hour WC and driver washing facilities were approved in November 2016 under planning reference 15/505213/FULL. This proposal has not been implemented.
- 1.06 In 2018, a similar application for forty one industrial units and a truckstop was withdrawn when the agent became aware of the fact that part of the boundaries to the site shown on the site layout for that application were not within the ownership of the applicants (18/504147/FULL).

2.0 PROPOSAL

- 2.01 The proposal is for thirty four new-build small industrial units with associated parking and landscaping, and a small truckstop café and secure lorry park.
- 2.02 The industrial units would be faced with grey panels with cedarwood panels to provide a visual variation in the appearance of the units. They would have the appearance of two-storey buildings, but with no first floor, making each unit single floor only, and have shallow, steel profile roofs. The units would each measure 8 metres by 12 metres floor area and extend to a ridge height of 8.5metres. Each unit would have two allocated parking spaces adjacent to the unit, and one delivery space outside the roller shutter door serving each unit. Units 10, 28 and 34 will also have side windows, as these units are in prominent positions, and a window will break up a blank expanse of side wall.
- 2.03 Following amendments to the initially-proposed design of the building, the proposed truckstop café would be one and a half storeys in height, giving an eaves height of 3.5 metres and a ridge height of 7.2 metres, and finished in a similar manner to the industrial units, but with large dormer windows to the eaves. The truckstop which would have a floor area of 16metres by 12 metres would offer café facilities and washrooms for visiting drivers.
- 2.04 The submitted drawings show parking spaces for fourteen lorries and seven smaller vehicles surrounding the truckstop
- 2.05 The lorry park proposed would offer free lorry parking.
- 2.06 The proposal is accompanied by a landscaping scheme, which shows a scheme of soft landscaping to the boundaries of the site as well as landscaping within the site.
- 2.07 Vehicular access to the site would be provided from the slip road leading to/from the Thanet Way.

- 2.08 The applicant suggests that the development would support 80 jobs. The buildings would be restricted to the following Use Classes: B2 and B8 for the industrial units and A3 for the café.
- 2.08 The proposal is also accompanied by a drainage plan; an ecological and reptile survey; a surface water management plan and flood risk assessment; a waste assessment criteria report; a transport statement; and two letters from local estate agents, confirming a need for small industrial units in the Borough.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	1.238ha	1.238ha	-
Approximate Ridge Height (m) Industrial Units	-	8.2m	+8.2m
Approximate Eaves Height (m) (Industrial Units)	-	7.2m	+7.2m
Approximate Ridge Height (m) (Café)	-	3.5m	+3.5m
Approximate Ridge Height (m) (Café)	-	7.2m	+7.2m
Approximate Depth (m) (Industrial Units)	-	12m (per unit)	+12m (per unit)
Approximate Width (m) (Industrial Units)	-	8m (per unit)	+8m (per unit)
Approximate Depth (m) (Café)	-	12m	+12m
Approximate Width (m) (Café)	-	16m	+16m
No. of Storeys	-	2 or 1 ½ (Café)	+2 or +1 ½
Parking Spaces	-	68 (Industrial Units) 21 (Truckstop)	+ 89 (Total)

4.0 PLANNING CONSTRAINTS

- 4.01 Outside established built-up area boundaries.

5.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

- 5.01 Chapter 2 – Achieving sustainable development
Chapter 6 – Building a strong, competitive economy
Chapter 9 – Promoting sustainable transport
Chapter 12 – Achieving well designed places

Bearing fruits 2013: The Swale Borough Local Plan 2017

- 5.02 Policy ST1 – Delivering sustainable development
Policy CP1 – Building a strong, competitive economy

Policy CP 4 – Requiring good design
 Policy DM 6 – Managing transport demand and impact
 Policy DM 7 – Vehicle parking
 Policy DM 14 – General development criteria
 Policy DM 19 – Sustainable design and construction
 Policy DM 21 – Water, flooding and drainage

6.0 LOCAL REPRESENTATIONS

- 6.01 The Yorkletts Residents' Committee has raised the following comments with regard to the application:
- The developer has met with us to discuss the proposal
 - Concern over traffic travelling along narrow lanes, which have no pavements and few street lights
 - Local lanes used by walkers, cyclists and horse riders
 - Represents an unsustainable increase in traffic
 - Public transport for area is poor
 - Disagree with KCC Highways and Transportation's assessment of the traffic impact
- 6.02 Four letters and emails of objection have been received from local residents. Their comments may be summarised as follows:
- Dargate Road is narrow and winding
 - Satellite Navigation system issues (*not specified*)
 - HGVs will not pay for parking and will park on the public road, which has just been resurfaced
 - Lorry park will create litter
 - *'Overnight parking of vehicles is open to security issues from theft and vandalism which effect properties in the vicinity putting them in danger of a higher chance of burglary and therefore increasing insurance premiums and decreasing property value.'*
 - We have more industrial units in the area than we need
 - Drivers will attempt to access the site via Fox's Cross Hill and Dargate Road, rather than the Thanet Way; these roads are narrow and for the most part unlit
 - Site is too near to Dover; lorries want to get nearer to or further from the port before they stop
 - The proposal will lead to increased road signage
 - There is too much café competition locally to allow this one to succeed

I have re-consulted 3rd parties on the amendments and will let Members know if any further comments are received.

7.0 CONSULTATIONS

- 7.01 Hernhill Parish Council raises objection to the application, noting:

'The Parish Council objects to the proposal. Whilst there has been a reduction in the number of units the proposal still over intensifies the use of the site; there is concern over the visual impact of the proposals due to a lack of information on the proposed landscaping and site levels; there is a significant change in level from the site to the Thanet Way and units 1-10 in particular would appear to be too close to the highway. The Parish Council consider that the approved plans for a lorry park (15/505213/Full) to be a more appropriate use of the site.'

I have re-consulted 3rd parties on the amendments and will let Members know if any further comments are received.

- 7.02 KCC Highways and Transportation have requested further parking/turning details. These have been received, and I await their further comments. I shall report these at the meeting. They also comment that the impact of the development on the surrounding highways network would not be severe, and note a number of minor changes to the layout, which have been incorporated into the amended site plan by the applicant. As noted above, a swept path analysis has also been requested. I shall report progress to the Committee at the meeting.
- 7.03 Highways England has also requested further highways details, though they note that the A299 does not form part of the strategic road network for which they are responsible. I await such details and I will report these, and Highways England's comments, at the meeting.
- 7.04 The Environment Agency raises no objection.
- 7.05 The Environmental Protection Team Leader raises no objection, subject to the inclusion of a Construction Environmental Management Plan, noting that "I acknowledge that there are residential properties to the north of Highstreet Road and the issue of potential noise disturbance by this proposal was considered, however, it was deemed that the background noise level is likely to be already elevated due to existing industry and the Thanet Way traffic noise."
- 7.06 Southern Water raises no objection, subject to the inclusion of an Informative listed below.
- 7.07 No response has been received from KCC Ecology. I have again requested same, and will report any response to the Planning Committee at the meetings.
- 7.08 Kent Police has requested a number of Informatives to be included; those specific to this site are listed below.
- 7.09 Natural England raises no objection
- 7.10 KCC Flood and Water Management raises no objection, subject to the inclusion of drainage conditions listed below.

8.0 APPRAISAL

- 8.01 The key material planning issues to consider in this case are those of the principle of development, effect upon local highway safety and convenience; the effect upon residential amenity; and the effect upon visual amenity and the local landscape. For the sake of regularity, I shall consider each of these in turn.
- 8.02 Principle of Development – The site is situated some distance outside any established built-up area boundary, where policies of rural restraint apply. The Council generally would not support development outside the established boundaries, but I am of the opinion that the proposal should be treated as an exception for the following reasons:

- Members will note the planning history, particularly the previous permission for a truckstop and lorry parking granted under reference 15/505213/FULL, which shows that the principle of development on this site is acceptable.
- Historical use – The proposed site has seen various works to its levels in the past, all of which were regularised by the previous application for a truckstop/ lorry park
- The site does not currently present a pleasing visual aspect
- The location has superb road transport links, adjacent to the Thanet Way and approximately two miles from both the M2 and A2 ultimately connecting with the port of Dover in one direction and London in the other direction. As such, the site is in a sustainable location
- The site is not situated in an isolated rural location; existing freight and industrial facilities are also to be found in the immediate vicinity

As such, the site is in a very sustainable location, in accordance with Policy ST1 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017, and offers a well-placed location for this use. I therefore find the principle of development to be acceptable in this case, noting that the development would support up to approximately 80 jobs.

- 8.03 Highway Safety and Convenience - I note the comments from local residents with regard to highways concerns, but have to acknowledge that this is anecdotal evidence which is not supported by the views expressed by KCC Highways and Transportation. Much as I have every sympathy with the concerns of local residents, in this matter I must take the expert advice of the Highway Authority responsible for the A299 and the other roads in the vicinity of the site.
- 8.04 I also acknowledge concerns raised that many drivers, if going to Canterbury, might choose to drive via Dargate Road, Fox's Cross Hill and Fox's Cross Road. However, it is far more likely that HGVs and delivery vehicles would be travelling either east towards the coast, or west towards London. Nonetheless, even assuming that some drivers will need to go to Canterbury from the site, unless they have local knowledge of the nearby roads system, it seems unlikely that this will have a significant detrimental impact on road safety and amenity. My own satellite navigation, when on site and programmed for a location in Canterbury, gave a route along the Thanet Way and onto the A2, not via the rural lanes.
- 8.05 Residential Amenity - With regard to the effect of the proposal on residential amenity, I note that the nearest property to the site is situated approximately 120 metres away. Bearing in mind that the dual-carriageway Thanet Way is a similar distance away from these dwellings, I consider it unlikely that the proposal, if approved, would increase any instance of noise issues. The main residential amenity issues raised are traffic issues which would have a knock-on effect on residential amenity; this issue is considered in the previous two paragraphs.
- 8.06 Members will also note that the Environmental Protection Team Leader raises no objection.
- 8.07 It should also be noted that there are a number of nearby sites which have industrial units on them for heavy and light industry, storage and distribution, etc. This suggests that the immediate area is a suitable area to provide such commercial sites, supporting local businesses and encouraging enterprise, probably due to the excellent transport links provided.
- 8.08 Moving onto the issue of visual amenity, it should be noted that Officers have held extensive negotiations with the applicants and their agent in order to achieve a well-

designed scheme, with a good level of landscaping both softening and screening the development visually. It is difficult to produce visually pleasing industrial units, but the applicant has taken pains to amend the proposal to show modest units, with suitable cladding options, and with a conscious effort to visually break blank elevations by the insertion of windows.

- 8.09 I note the comments received from a local resident noting that there are already cafes at both of the nearby petrol stations, but the proposed truckstop, with its commensurate parking for HGVs, is likely to attract a different clientele from the cafes (lorry drivers, delivery drivers, etc.), and would thus not be detrimental to their commercial viability. In any event, this is a not an issue upon which the application could be determined.
- 8.10 As such, I am of the opinion that the proposal, if approved, will bring benefits far in excess of any detrimental impact of the scheme, which I consider to be minor. The preamble to Policy CP1 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017 notes at paragraph 5.1.14 that ‘priority locations’ for appropriate sites for employment include those which are ‘*well related to either the A249, A2, Sittingbourne Northern Relief Road or A299 Thanet Way*’. The applicant estimates that 80 new jobs would be created by the proposal, which further supports the aims of Policy CP1 in supporting the local economy and creating new jobs for the area. Similarly, Policy DM3 (the rural economy) states that ‘*planning permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area.*’ As such, I am of the opinion that the proposal is in full accord with both the NPPF and the adopted Local Plan.
- 8.11 Ecology – It is important that ecological gain is an aspect of any permission granted. The detailed planting scheme submitted, with the inclusion of native species is an important aspect of this gain. However, to ensure that an ecological gain for the site is obtained, I have included a condition below.

9.0 CONCLUSION

- 9.01 As such, I recommend that the proposal be approved, subject to the conditions set out below, and subject to the further views of KCC Highways and Transportation, and Highways England, and to any further comments from 3rd parties or the Parish Council.

- 10.0 RECOMMENDATION** – GRANT Subject to conditions as set out below, and the further comments of consultees and 3rd parties as described above:

CONDITIONS

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

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

- (2) The development hereby permitted shall be carried out in accordance with the following approved drawings:
1564.001E; 1564.002A; 1564.003C; 1564.004A; 1564.005B; 1564.006A; 1564.007B; 1564.008A; 1564.009B; 1564.010A; 1564.011B; 1564.012A; 1564.013B; 1564.014A; 1564.015B; 1564.016C; 1564.017C; 1564.019; and 5224-LLB-XX-XX-DR-L-0001-S3-P01.

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

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

Reason: In the interest of visual amenity.

- (4) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority. These details shall include:
- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
 - A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
 - Details of the number, location and height of the lighting columns or other fixtures.
 - The type, number, mounting height and alignment of the luminaries.
 - The beam angles and upwards waste light ratio for each light.
 - An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Reason: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings.

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

Reason: In the interests of the amenities of the area and highway safety and convenience.

- (6) 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.

- (7) 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.

- (8) 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 Surface Water Management Strategy incorporating a Flood Risk Assessment (October 2018) by RMB Consultants. The drainage scheme shall also 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 at an agreed discharge rate 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 then 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.

- (9) 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, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework (July 2018).

- (10) The scheme of tree planting and landscaping shown on the submitted Planting Plan numbered 5224-LLB-XX-XX-DR-L-0001-S3-P01 shall be carried out within 12 months of the completion of the development. Any trees or shrubs removed, dying, being

severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

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

- (11) The trees shown on the plans hereby approved as "existing trees to be retained" shall be retained and maintained. Any trees removed, dying, being severely damaged or becoming seriously diseased within five years of the date of this permission shall be replaced with trees or shrubs of such size and species as may be agreed with the Local Planning Authority.

Reason: In the interests of visual amenity.

- (12) The units hereby permitted shall be used for the purpose of offices, research and development, light or general industrial uses; or storage and distribution, and for no other purpose, including any other purposes in Classes B1, B2 or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

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

- (13) The truckstop/café building hereby permitted shall be used for the purposes of a café only and for no other purpose, including any other purposes in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

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

- (14) Notwithstanding Section 55 of the Town and Country Planning Act 1990 (as amended) no additional floor space in the form of a mezzanine floor shall be provided within units 1-34 of the development hereby approved.

Reason: In order to reduce the potential for the intensification of use of the site and in the interests of residential amenity and highway safety in accordance.

- (15) The area shown on the submitted plan as loading, off-loading and parking space shall be used for or be available for such use at all times when the premises are in use and no 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 that area of land or in such a position as to preclude vehicular access to this reserved area; such land and access thereto shall be provided prior to the commencement of the use hereby permitted.

Reason: Development without adequate provision for the parking, loading or off-loading of vehicles is likely to lead to parking inconvenient to other road users.

- (16) No external storage of parts, equipment, raw materials or products shall take place within the site.

Reason: In the interests of visual amenity.

- (17) No development shall take place until details in the form of cross-sectional drawings through the site showing existing and proposed site levels and finished floor levels have been submitted to and approved by the Local Planning Authority. The development shall then be completed strictly in accordance with those approved details.

Reason: In order to secure a record of existing site levels and to ensure a satisfactory form of development having regard to the sloping nature of the site,

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

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

- (19) Prior to the use hereby approved commencing, a Biodiversity Enhancement Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and thereafter maintained.

Reason: To ensure that there is a net gain in biodiversity.

Informatives

- (1) The following advice is provided by Kent Police:
1. Wave kerbs can be installed to deflect potential of vehicles parking on them and potentially blocking access routes or causing nuisance.
 2. The pedestrian routes between units 4 and 5, 11-14 and 15-18 and 23-28 and 29-34 should all be gated at both ends to help maintain security.
 3. Vehicle parking for each unit inc. visitor spaces to be allocated.
 4. Lighting and CCTV: a plan for both is essential to meet security needs without causing light pollution. CCTV Monitors to be on live feed in the café, reception and rest areas.
 5. Access Control – Essential to all commercial units and the whole café block.
 6. An option for security staff 24/7 was suggested by the agent but no details to date. If an ATM is to be installed, then we would comment further.
 7. Doorsets (including rear doors), roller shutter doors, windows and glazing to meet SBD Commercial standards.
 10. Alarms to be fitted to the commercial unit rear doors and a panic alarm should be installed at the reception.

If the points above are not addressed, they can affect the development and have a knock on effect for the future services and local policing.

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

Council's Approach to this Application

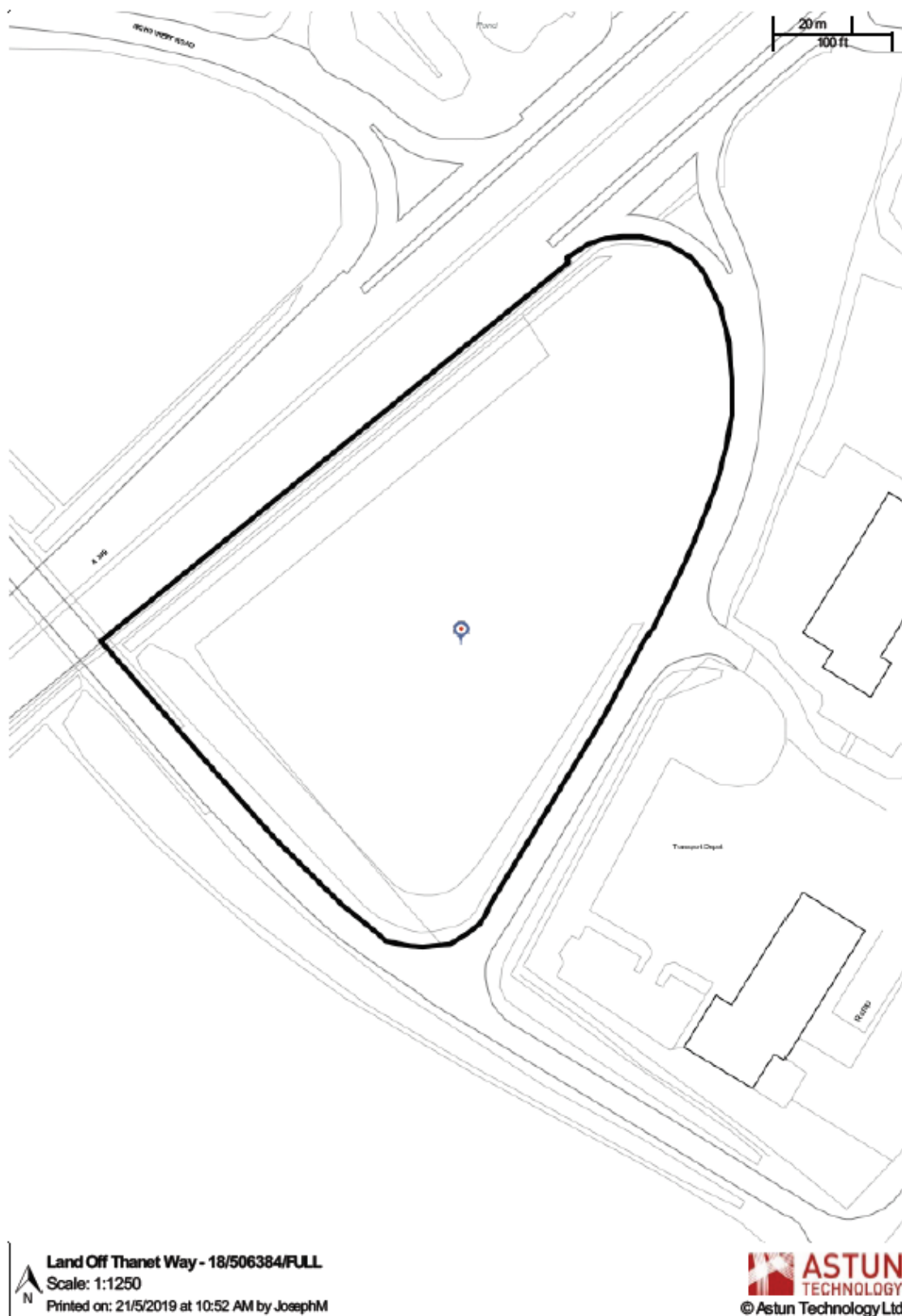
In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused

on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants/ agents of any issues that may arise in the processing of their application.

In this instance;

Amendments and additional information were submitted by the applicant; and the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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 - 18/502735/FULL		
APPLICATION PROPOSAL 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.		
ADDRESS Land At Perry Court Ashford Road Faversham Kent ME13 8YA		
RECOMMENDATION - Grant subject to completion of a S106 Agreement and submission of an amended plan to improve the area available for landscaping within the site of the retail unit.		
SUMMARY OF REASONS FOR RECOMMENDATION <ul style="list-style-type: none"> • The site forms part of a strategic mixed use development site as allocated under policy MU7 of the local plan. • The principle of a hotel has already been established through the grant of outline permission • The impact of the retail unit has been assessed and found to be acceptable • The scale and design of the development is considered to be acceptable. • The scheme would not result in unacceptable impacts upon the highway subject to financial contributions to mitigate impacts at the A2 / A251 and at Brenley Corner • Other localised impacts have been assessed and found to be acceptable. 		
REASON FOR REFERRAL TO COMMITTEE The application has been referred to committee by Cllr David Simmonds on the basis that the retail store is much larger than was proposed under the outline permission and would have significantly more impact on local residents, that he has concerns over the capacity of the A2 / A251 junction and air quality issues, and regarding shopper / staff car parking and daily deliveries, including Sunday disturbance.		
WARD Watling	PARISH/TOWN COUNCIL Faversham Town	APPLICANT HDD (Faversham) Limited And Premier Inn Hotels Limited AGENT Pegasus Planning Group
DECISION DUE DATE 06/09/18		PUBLICITY EXPIRY DATE 25/02/19

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 27.03.17

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 01.03.2019

18/500815/ENVSCR - EIA Screening Opinion for a Mixed use Local Centre Development – EIA not required (decision made by the Secretary of State) 20/06/18

18/503057 - Erection of a 3 storey, 66 bed care home for older people with associated access, car park and landscaping - Pending Consideration.

1. DESCRIPTION OF SITE

- 1.01 The application site consists of two parcels of land of just under 2 hectares in area, located on the west side of Ashford Road. The land is raised above the level of Ashford Road, by up to 2 metres, and is partially screened by existing hedging.
- 1.02 The land was formerly part of larger agricultural fields, and forms part of the wider Perry Court development site as allocated under Policy MU7 of the adopted Local Plan. This wider land benefits from outline permission for a large scale development under application 15/504264/OUT, and from reserved matters approval for residential development of 310 units on a large part of the site (ref 17/506603/REM).
- 1.03 As part of this existing permission, a new roundabout and access point into the site has been formed from Ashford Road, which has resulted in some re-grading of land levels and removal of hedging.
- 1.04 The two land parcels subject to this application site are sited on either side of this new access point.
- 1.05 The application site is surrounded to the north, south and west by the land allocated for development under Policy MU7 of the Local Plan. Under the terms of the outline permission and reserved matters approvals, this land would form part of the residential development to the west and north. The land to the south has approval under the outline permission for a business park, although to date there has been no reserved matters application for this.
- 1.06 A line of existing detached dwellings are located on the eastern side of Ashford Road and face towards the application site.

2. PROPOSAL

- 2.01 The application seeks planning permission to erect a supermarket and hotel on the site.
- 2.02 The proposed supermarket would be sited on the southern parcel of land, and would consist of a roughly rectangular shaped building of 1,725 sqm gross floor area, with a 1,254 sqm net sales area. The building would be single storey, under a mono-pitched roof and would range between 5.5m and 8.5m in height. The footprint would measure 63m x 30m. The building would be mainly finished in brickwork and composite cladding, with a Brise Soleil detail around the main entrance.

- 2.03 The building would be sited towards the southern end of the site and the main elevation would face north, towards the main access road leading from the new roundabout into the Perry Court development. A 124 space car park would be provided, the majority of which would be to the front (north) of the building. The layout also includes areas of landscaping and footpaths to the south and east (adjacent to Ashford Road), which would tie in with footpath routes and connections approved within the wider Perry Court development site.
- 2.04 The proposed hotel would be sited on the north parcel of land. The building would be roughly rectangular in shape and would be over three storeys – with a maximum height of approximately 11.1 metres (excluding lift shaft). The building would measure 65m in length, and up to 22m in depth. The building would contain 84 bedrooms, a main reception area and a bar / restaurant facility. The overall floor area of the hotel would be approximately 3000sqm.
- 2.05 The building has been designed in a contemporary style, broken down into three main sections. Each section is articulated to provide slight variations in height. The main elevational treatment of the building would be in brick and timber-style cladding. The cladding is used to frame each section of the building.
- 2.06 The building would be sited close to the southern boundary of the site, next to the proposed access road into the wider development. The car park to the hotel would be sited to the rear of the building and would accommodate 85 parking spaces.

3. PLANNING CONSTRAINTS

Within built confines of Faversham

Part of site allocation Policy MU7

A High Pressure Gas Pipe is located to the south of the proposed retail unit.

4. POLICY AND CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF) – paragraphs 2 (determination of applications), 7 (sustainable development), 8 (the three objectives of sustainable development), 10 (presumption in favour of sustainable development), 54-57 (use of conditions and planning obligations), 80 (building a strong economy), 85-90 (ensuring the vitality of town centres), 108-111 (sustainable transport), 117-121 (Making effective use of land), 124-131 (good design), 149-154 Planning for climate change, 155-165 (flood risk and drainage), 174-177 (biodiversity)
- 4.02 National Planning Practice Guidance (NPPG). The following guidance documents are of relevance - Air Quality, Climate Change, Design, Determining a Planning Application, Ensuring the vitality of town centres, Planning Obligations, Transport evidence bases in plan making and decision taking, Travel plans, Transport Assessments and Statements, Use of Planning Conditions.
- Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017:
- 4.03 Policy MU7 of the Local Plan is relevant insofar that it is a specific site allocation policy for the wider parcel of land at Perry Court, which this application forms a part of. The policy is copied in full below.

Planning permission will be granted for a mixed use development at Perry Court Farm, Faversham, as shown on the [Proposals Map](#), to include a minimum of 370 dwellings (inc. care home), together with 18,525 sq. m of B1a, B1b, B1c class employment uses (with a further 2 ha reserved for future employment use), supporting uses and landscaping and open space. Development proposals will:

- 1. Be in accordance with Policy CP 4 and in particular demonstrate and provide a strong landscape framework (shown by a submitted Landscape Strategy and Landscape and Ecological Management Plan, informed by a landscape and visual impact assessment) to include:*
 - a. substantial width of woodland planting along the site boundary with the M2, which shall additionally safeguard the setting of the Kent Downs AONB;*
 - b. additional substantial areas of woodland planting and green space e.g. community orchards and allotments, within the south western quarter of the site near Brogdale Road;*
 - c. retained, managed and enhanced hedgerows and shelterbelts;*
 - d. footpath and cycle path routes within green corridors linked to the adjacent network; and*
 - e. planting selected to reinforce the local landscape character area.*
- 2. Be of high quality design, with building siting, form, height and materials related to the existing built form and topography of the site and the surrounding context and to include consideration of:*
 - a. the setting of landscape and heritage assets;*
 - b. the rural approaches to the town; and*
 - c. building heights demonstrating they have been influenced by, and show respect for, views from the south.*
- 3. Provide for a mix of housing in accordance with Policy CP 3, including provision for affordable housing in accordance with Policy DM 8;*
- 4. Through both on and off site measures, ensure that any significant adverse impacts on European sites through recreational pressure is mitigated in accordance with Policies CP 7 and DM 28, including a financial contribution towards the Strategic Access Management and Monitoring Strategy;*
- 5. Submit a detailed Heritage Assessment to consider the significance of the impact of development at the local level on the heritage setting of the town and other heritage assets in accordance with policies DM 32-DM 33. An archaeological assessment should consider the importance of the site and, if necessary propose mitigation in accordance with DM 34;*
- 6. Provide the majority of B1 class employment floorspace as B1a (offices). Employment uses other than B1 will not be permitted unless it is clearly shown that B1 uses would not be achievable.*

Proposals for alternative employment uses must demonstrate they would not diminish the quality of the development, whilst proposals for main town centre uses will need to be the subject of an impact assessment;
- 7. Undertake an Air Quality Assessment to ensure that the Ospringe AQMA is not compromised, with, if necessary, the use of innovative mitigation measures;*
- 8. Submit a Noise Assessment and implement any mitigation arising;*
- 9. Be supported by a Transport Assessment to determine the need and timing for any improvements to the transport network and the phasing of development. Development shall undertake such mitigation as necessary which shall include:*
 - a. interim improvements at Junction 7 of the M2;*
 - b. improvements to the junctions of the A2/A251 and to the A2/Brogdale Road;*
 - c. pedestrian and cycling routes;*
 - d. public transport enhancements to improve links to the town centre; and*
 - e. implementation of an agreed travel Plan; and*

10. Provide infrastructure needs arising from the development, including those matters identified by the Local Plan Implementation and Delivery Schedule, in particular those relating to libraries, education and health.

- 4.04 The supporting text to the policy states that *“The impact of locating main town centre uses, such as offices, leisure and retail development may require the submission of an impact assessment in accordance with Policy DM 2, but it is the Council’s view that larger scale retail and leisure development is unlikely to be acceptable due to adverse impacts on the town centre.”*
- 4.05 Policy DM2 relates specifically to proposals for main town centre uses. This includes both retail and hotel development as is proposed under this application. The policy states that proposals for main town centre uses will be permitted subject to –
1. Taking into account the scale and type of development proposed in relation to the size, role and function of the centre,
 2. Being located within the town centres as defined on the [Proposals Map](#); or
 3. Where demonstrated that a town centre site is not available, being located on a site on the edge of a town centre, subject to criteria 4a to 4c; or
 4. Where demonstrated that there are no suitable sites available at locations within 2. and 3. above, proposals elsewhere within the built-up areas of Faversham, Sheerness and Sittingbourne, as shown on the Proposals Map will only be permitted if:
 - a. it is demonstrated by an impact assessment (when the proposal is above the defined floorspace threshold in national planning policy) that it would not individually, or cumulatively with those trading or proposed, undermine the vitality and viability of existing town centres, or of other local centres and the facilities and services of other locations;
 - b. it does not materially prejudice the provision of other land uses, particularly the supply of land for 'B' use class uses, housing, community use and open space; and
 - c. it is well located in relation to the main road network and easily accessible by public transport, pedestrians and cyclists.
- 4.06 Other relevant policies are ST1 (Delivering sustainable development), ST7 (The Faversham Area Strategy), CP1 (Building a strong economy), CP2 (Sustainable transport), CP4 (good design), DM6 (Managing Transport Demand), DM7 (vehicle parking), DM14 (general Development criteria), DM19 (sustainable design), DM28 (biodiversity),

5. LOCAL REPRESENTATIONS

- 5.01 This process has included sending notification letters to nearby neighbouring properties, display of a site notice and advertisement of the application in a local paper.
- 5.02 Following this, 21 letters of objection have been received (some multiple letters from the same household), raising the following matters –
- Overlooking / lack of privacy
 - Additional traffic generated (including cumulative impacts)
 - Impact upon the A251 / A2 / Mall Junction
 - Creation of noise, smells and disturbance arising from commercial uses
 - Impact of additional traffic on air quality (including cumulative development impacts)
 - The convenience store permitted under the outline scheme is now a supermarket
 - The supermarket will be open for long hours with associated noise, disturbance and pollution.
 - A supermarket is not needed in Faversham

- No significant mitigation of traffic on the A251 is proposed
- The location would force people to drive to the supermarket
- Impact of deliveries to the supermarket at unsociable times
- No need for a hotel in Faversham
- The hotel will be a four-storey building and will cause significant privacy issues.
- The size and scale of the hotel would be out of keeping with the area
- Small hotels in the area could go out of business
- The additional traffic and impacts on the A251 will affect the operation of the Fire and Ambulance Services stationed on Ashford Road and Canterbury Road
- Ecological / screening impacts through removal of hedgerows and trees
- Cumulative impacts arising from wider development of Perry Court
- The height difference of the hotel is exacerbated by the higher land levels of the site
- There is still no resolution in place to upgrade the A2 / A251 junction
- Light pollution
- Impact on the Ospringe AQMA
- Loss of agricultural land
- Lack of crossing point on the A2
- The development would compromise any future proposals to create a bypass
- The highway network is already over capacity
- The original outline indicated the hotel would be lower than now proposed
- Disturbance from the hotel if a licence is granted
- Lack of screening on Ashford Road frontage
- Impact on drainage
- The walking / cycling experience on Ashford Road is not safe / pleasant
- Objections raised by residents are ignored
- Additional HGV movements arising from the supermarket operation
- This will encourage people to park on the A251 verges
- Impacts of signage and illumination
- Restrictions should be placed to prevent removal of trolleys from the site
- Noise impacts from hotel users
- Noise impacts from use of hotel car park at unsociable hours
- Development on the site will be greater than as approved at outline stage.
- Existing modern buildings in Faversham do not enhance the town, and the modern buildings proposed will not do so either
- Lack of any proposals to utilise solar energy
- The building designs are not in keeping with the area in a key visual location at the entrance to the town
- Lack of EV charging points
- The design is generic, with no local influence
- The amended plans do not improve the quality of the proposed buildings.
- Impact of an out of town supermarket on the town centre
- The applications should be considered against other approved and current applications at Perry Court

5.03 A letter has been received from the Faversham Society which states (summarised)

- The supermarket scheme should be supported as it would provide an alternative type to other supermarkets in Faversham and is located close to approved new developments in the town.
- The standardised hotel design is disappointing and more attention should be paid to local materials and roof forms. The location of the hotel is appropriate.

5.04 Two letters have been received from Peacock Smith Solicitors, acting for Morrisons supermarket, and a letter received from MRPP Planning Consultants acting for Tesco. They object to the application on the following grounds –

- Foodstores are already over-provided in Faversham.
- The trade diversion to the proposed Aldi store would primarily come from the town centre, as this is where most food stores are located.
- The scheme does not address how the proposal will affect the wider development and relationship with other land uses within Perry Court.
- The Council's retail consultant has underestimated the impact of the proposed Aldi supermarket on the town centre
- The Council's retail consultant has used benchmark averages which do not reflect the actual turnover of Morrisons, which operates at a lower turnover and therefore the forecast impact is greater.
- The benchmark criteria is of little utility as all stores are shown to operate below benchmark value as a result of the Aldi proposal (i.e because they start at benchmark without it), and this fails to identify the performance of existing stores and vulnerability to change.
- That both the Tesco and Morrisons stores are well connected to the town centre and supports linked trips, which would be reduced if trade was diverted to the proposed Aldi store.
- There are errors in the Carter Jonas analysis which substantially underestimates the floorspace of Tesco.
- Tesco now trades substantially below benchmark.
- It is highly likely that other town centre convenience stores are trading below benchmark levels
- There is no suggestion that Tesco would close, but diverted trade will have other harmful effects, particularly a reduction in linked trips to the town centre.
- The Local Plan "does not suggest a need to support new floorspace outside (Faversham's) existing centre"
- Policy MU7 is clear that any proposals for town centre uses on the Perry Court site will need to be subject to an impact assessment. The applicant has supplied this, nor has the Council undertaken an assessment that legitimately meets this.
- The impact on the town centre will be significantly adverse.
- A full and detailed retail study (to include household surveys)

6. CONSULTATIONS

Faversham Town Council

- 6.01 Original Plans – state that they are not happy with the design and this should be referred to the Swale Design Panel for review. Raise concern regarding traffic at the A2 / A251 junction upgrade, and that traffic modelling should be undertaken once the upgrade decision has been taken.
- 6.02 Amended Plans – state that they support the changes to the proposal, and that previous issues have been addressed, although they remain seriously concerned about the A2 / A251 junction and seek clarification from KCC Highways on this, and are concerned with the new roundabout on the A251 which needs further review.

KCC Highways and Transportation

- 6.03 Following the submission of amended / additional material KCC Highways do not raise objection to the scheme subject to the imposition of conditions and a S106 Agreement

to secure a financial contribution towards improvements to the A2 / Ashford Road junction. The following comments are also made -

- TRICS data demonstrates two- way AM peak movements of an additional 77 vehicles and 150 PM peak movements.
- Tracking demonstrates that a 16.5 metre long vehicle can safely service both the proposed hotel and supermarket.
- The A2 Canterbury Road / A251 Ashford Road junction is predicted to be subject to an additional 32 AM and 66 PM movements. The junction analysis demonstrates that the junction is exceeding capacity and without mitigation the application could not be permitted.
- The A2 London Road / B2041 The Mall junction is predicted to be subject to an additional 15 AM and 29 PM movements.
- The proposed new roundabout junction into Perry Court development would be subject to an additional 77 AM and 150PM peak movements. The additional movements result the junction reaching its capacity in the 2028 AM peak assessment.
- Car parking for the supermarket element is two spaces over provision and the hotel is within standards. Appropriate disability bays and cycle parking is provided. Parking provision is therefore acceptable.
- A staff travel plan has been submitted and is acceptable
- As outlined in the above the A2/A251 junction exceeds its capacity in the future year assessments. It is therefore clear that the additional 98 movements through the junction could not be could be accepted without further works being completed. The Highway Authority are therefore looking at a second phase of improvements that incorporate the A2/A251 and the A2/The Mall junctions. Contributions are now being collected for the junction at a rate of £1020 per peak hour movement through the junctions and include both The Mall and A251 connections with the A2. A financial contribution is therefore requested at a level of £99,660 towards Phase 2 of the A2/A251 Faversham capacity improvement scheme.
- Planning conditions are recommended relating to provision of a construction management plan, provision / retention of parking spaces, cycle spaces and loading / unloading facilities , completion and maintenance of the access, completion / maintenance of visibility splays, and provision of a staff travel plan.

Highways England

- 6.04 Raise no objection following the submission of amendments / additional information, on the basis that the applicant has agreed to enter into a Section 278 Agreement of the Highways Act 1980 with Highways England for a contribution of £27,105 towards highway works at M2 Junction 7 Brenley Corner.
- 6.05 Advise that the development will not materially affect the safety, reliability and/or operation of the strategic road network (the tests set out in DfT Circular 02/2013, particularly paragraphs 9 & 10, and DCLG NPPF particularly paragraph 109) in this location and its vicinity.
- 6.06 Advise that the supermarket proposal (which was not part of the outline permission) is likely to be over and above the trips calculated for the outline permission. Cumulatively, there is likely to be a requirement for an additional contribution to offset the impacts at Brenley Corner.
- 6.07 Advise that confirmation from KCC Highways should be obtained to ensure that the scheme of improvements at the A2/A251 will be sufficient to manage the additional demand placed upon it such that any extent of queuing south along the A251 does adversely impact on the safe and efficient operation of M2 Junction 6.

Environment Agency

- 6.08 No objection subject to conditions relating to contamination, surface water drainage or foundation design.

Health and Safety Executive

- 6.09 Do not advise against the grant of planning permission. Recommends that SBC should consider contacting the pipeline operator before deciding the case.

Scotia Gas Networks

- 6.10 No comments received

SBC Economy and Community Services Manager

- 6.11 Supports the hotel development in Faversham as it will provide additional bed spaces and will support development of the day visitor economy in accordance with the Council's Visitor Economy Framework (adopted Feb 2018).

Kent Police

- 6.12 Advise that the application has considered crime prevention and attempted to apply some of the attributes of CPTED in the plans. Advise that further matters relating to the supermarket (parking, landscaping, EV points, permeability, CCTV and lighting, use of shutters / bollards, potential for ATM installation) should be discussed or applied via a planning condition.

Natural England

- 6.13 Advise they have no comments to make on the application

KCC Ecology

- 6.14 Raise no objection based on the ecological appraisal submitted. Advise that notable species (including reptiles, breeding birds and badgers) have been recorded within the wider site, and that development will need to follow a precautionary mitigation strategy. The mitigation proposed is appropriate. Require conditions relating to bat sensitive lighting, ecological mitigation, and ecological enhancements to the site.

KCC Drainage

- 6.15 Raise no objection to surface water drainage principles, but these need to be fully modelled at detailed design stage, and a condition is recommended to deal with this.

SBC Environmental Protection Team Manager (EPTM)

- 6.16 Raises no objection to the development, subject to the imposition of conditions.
- 6.17 In respect of air quality, the EPTM advises that the updated Air Quality Assessment is a competent report, uses acceptable methodology (although the dispersion modelling method is not named), and up to date guidance. It describes the Swale AQ data with particular reference to the Ospringe AQMA and models how this development would impact the AQMA for both NO₂ and PM₁₀, comparing it with actual monitored data and predicting the difference. Appendix I shows that in 2019 there are predicted to be some moderate impacts at various locations within the AQMA; the predicted impact is compared with the methodology used in the 2017 EPUK Guidance. These would reduce the next year 2020 but there were still predicted to be some moderate impacts, especially near the vicinity of the Ship Inn.
- 6.18 The report concludes that there will not be any significant adverse impacts on the AQMA or elsewhere as a result of this latest development. This is qualified in the conclusion by the addition of some mitigation measures.
- 6.19 The EPTM advises they are pleased that mitigation measures have been included, as there is still a prediction of some 'moderate' impacts in 2020 from the development and in his opinion the measures are necessary. No objection is raised to the report, provided that the measures outlined in paragraphs 5.34 & 5.35 are employed *exactly as written*. This will mean employing a person to act as a travel plan co-ordinator and there will need to be a sufficient number of electric charging points at the locations described in the final paragraph of 5.34.
- 6.20 The EPTM is satisfied that impacts relating to noise and operation of the service yard can be suitably controlled by condition, and recommends a condition requiring details of any plant or ventilation equipment.

UK Power Networks

- 6.21 Advise that the proposed development is in close proximity to a substation and could be notifiable under the Part Wall Act. Advise that substations should be a minimum of 7 metres (if enclosed) from living / bedroom accommodation to avoid noise / vibration, that 24 hr access to a substation has to be maintained.

Southern Water

- 6.22 Advise that foul sewage disposal can be provided to service the proposed development.

7 BACKGROUND PAPERS AND PLANS

- 7.01 The application includes the following documents: Planning statement, Design and Access statement, Landscape and Visual Appraisal, Arboricultural Assessment, Ecological Appraisal, Flood Risk Assessment, Retail Statement, Staff Travel Plan, Transport Statement. The applicant has also provided written responses to the Carter Jonas retail statement, the Council's new Retail and Leisure Needs Assessment, and the objections received on behalf of Tesco and Morrisons.

8. APPRAISAL

Principle of Development

- 8.01 The site is located within the built confines of Faversham under Policy ST3 of the Local Plan, and as designated through the allocation of the wider site for development under Policy MU7 of the Local Plan.
- 8.02 The wider site also benefits from permission for a mixed use development on the site under 15/504264/OUT, incorporating 310 dwellings, a care home, a hotel development of up to 100 bedrooms and 3250 sqm (with ancillary restaurant), B1 employment land, and a local convenience store. Reserved matters for the housing development has been granted under 17/506603/REM.
- 8.03 The land parcels subject to this application were indicatively shown to be allocated for use as a care home and hotel development on the parameter plans submitted with the outline application in 2015. The parameter plans set out indicative building heights of 11 metres and Gross Floor space of 3,800 sqm for the care home and 3,200 sqm for the hotel. It remains an option for the developer to bring forward development of these parcels in accordance with the outline permission as an alternative to this application now sought.
- 8.04 The care home is now proposed on land elsewhere within the wider Perry Court site. This is subject to a separate application which is currently under consideration (18/503057/FULL). The potential use of this land for the care home, and layout of the residential development as approved under the reserved matters means that a further parcel has been identified by the developer to accommodate a supermarket over and above the quantum of development originally approved at outline stage.
- 8.05 Whilst the land is currently undeveloped former agricultural land (albeit that site access works and preparatory works for wider development of the site have been undertaken), it is clear from the allocation of the site for development in the Local Plan, and from the planning permissions granted on the site and wider surroundings, that development is accepted in principle.
- 8.06 In my opinion, the key issues relate to the following matters –
- The proposal for a supermarket (rather than a local convenience store) on the site and the implications of this, including the effect on the town and other centres, traffic impacts, local impacts, and the ability for the wider Perry Court site to be developed under the framework of Policy MU7. Members will note that Policy MU7 does allow for a mixed use development to come forward, and criteria 6 of the policy explains that proposals for main town centre uses will need to be subject to an impact assessment. As such this policy does not prohibit a retail use as a matter of principle, but sets tests against which such use should be considered.
 - I consider the principle of a hotel to be acceptable at Perry Court as this was permitted under the outline scheme. The hotel as now proposed would fall well within the parameters for a hotel as set under the outline permission. The provision of a hotel would help promote the Borough's visitor economy and

deliver economic benefits. In my opinion, the main issues for consideration in relation to the hotel are those of scale, design, and relationship with surrounding buildings, rather than matters of principle.

- 8.07 As the site is both allocated for development and benefits from permission, matters such as loss of countryside and loss of best and most versatile agricultural land do not carry weight in the determination of this application.

Retail Impact

- 8.08 Both the NPPF and the Local Plan policy DM2 seek to protect the vitality and viability of town centres. As part of this process, proposals for main town centre uses should follow a sequential test and (where necessary) include a retail impact assessment to establish the effect of a retail development on the vitality and viability of a centre. Policy DM2 uses the NPPF threshold that a retail impact assessment should be provided if the development exceeds 2,500sqm of gross floorspace.
- 8.09 In respect of the hotel element of this scheme (which is also a main town centre use and normally subject to the sequential test), I am satisfied that this was explored and found to be acceptable under the outline permission granted. As this could still be implemented on the site under a reserved matters application for a hotel of up to 100 bedrooms, I do not consider that the hotel now proposed (at 84 bedrooms) needs to be tested again under an impact assessment..
- 8.10 As the retail unit would be under 2,500 sqm, there is no requirement for the applicant to submit a retail impact assessment under policy DM2 or the NPPF. Whilst policy MU7 of the Local Plan specifies that proposals for town centre uses will need to be subject to an impact assessment, the supporting text to this policy states that such a requirement should be in accordance with Policy DM2. As such I am satisfied that the requirement under MU7 is not more onerous than that under DM2, as has been suggested by the consultant acting for Tesco.
- 8.11 However, although the threshold is not met to require an applicant to provide a retail impact assessment, the Council should still consider the impact of a retail development on the town centre (or other centres) further.
- 8.12 The application includes a retail statement which firstly sets out that the sequential and impact tests are not required as the provision of a local centre is supported under Policy MU7 of the Local Plan. However I would disagree with this approach in respect of the sequential test. The supporting text to Policy MU7 (para 6.6.108) makes clear that any large scale retail facility on the site is unlikely to be acceptable (although subject to a RIA, and I consider the proposal to go well beyond the local convenience offer (200 sqm) as approved under the outline permission.
- 8.13 Notwithstanding this, the retail statement then proceeds to provide a sequential test and compares the scheme to a range of selected town centre, edge of centre and out of centre sites. These are (in part) assessed against the locational criteria of the application site, being 900m south of the defined town centre boundary and 1.1km from the primary shopping area. The report then discounts a list of potential alternative sites in Faversham, which include the following –

- *Town Centre* – Faversham Post Office and depot, 9 existing vacant units in the town centre. These were discounted on the basis that the post office site was still in use and unavailable, and too small in size to accommodate the Aldi store, and the existing vacant units were far too small (between 40 – 250 sqm) to accommodate the development.
 - *Edge of centre* (within 300m of Primary Shopping Area) – Buildings at West Street (unavailable and too small in size), Car Park, Institute Rd (still operational and limited in size), Tesco car park (unavailable, too small, commercially unviable), Faversham Leisure centre / Theatre car park (unavailable, too small), Queens Hall Car Park (well used / unavailable, too small).
 - *Out of Centre* – Oare Gravelworks (formally allocated but with no retail element included. Not as accessible or well connected with poorer road connections and greater distance to the Primary Shopping Area). Land East of Love Lane (formally allocated, permission granted for other uses, not as accessible / well connected to the town centre)
- 8.14 This has been further reviewed by my colleagues and the conclusion reached that we are satisfied that there are no other sequentially preferable sites available. I am therefore satisfied that the scheme meets the sequential test parameters.
- 8.15 Notwithstanding that the retail unit falls under the threshold for an applicant to provide a retail impact assessment, such smaller developments may still result in impacts existing centres. A retail consultant was initially employed by the Council to establish whether this was likely, and gave advice that the development could result in trade diversion both from Faversham and, to a lesser degree, from Sittingbourne. Following this initial advice, the consultant then undertook a retail impact assessment on behalf of the Council to establish the likely effects of such trade diversion.
- 8.16 The consultant forecast that there would be trade draw from Faversham town centre, and particularly the existing Tesco and Morrisons supermarket. This forecasting was primarily based on “benchmark” trading data, as the Council’s own data contained within its Town Centre Study dated back to 2010 and was out of date. The consultant forecast trade diversion to be in the region of 11% from the wider convenience offer in the town centre, and 12% from the Tesco and Morrisons stores, advised that this was a cause for concern but concluded that the proposal would be unlikely to seriously undermine the viability of these stores resulting in their potential closure and a consequent significant adverse impact on the vitality and viability of Faversham Town Centre as a whole.
- 8.17 The Council subsequently received objections from consultants acting for existing supermarkets in Faversham, as summarised in paragraph 5.04 above. The main concern relating to the development and the retail report was that these stores are trading well under benchmark levels – and that as such the retail impact would be greater than forecast. Alternatively, the applicant’s agent raised concern that predicted trading for the proposed Aldi store was overestimated, and that the turnover for the Tesco store was underestimated as it did not factor in an extension to the premises.
- 8.18 In the meantime, the Council has been undertaking a review of its Town Centre Study (2010) as part of the Local Plan process, and commissioned WYG Planning

consultants to undertake such work. An updated Retail and Leisure Needs Assessment (RLNA) was produced and reported to the Local Plan Panel in March. The report provides up to date information and data on the health of existing centres, and the trading performance of existing convenience stores. For Faversham, the report concludes that the town centre displays good levels of vitality and viability, is well represented by convenience goods provision, vacancy levels are below national average, and the town centre is attractive with a good standard of environmental quality. The report does not identify a need for additional convenience floorspace in the town during the plan period.

- 8.19 Given the production and publishing of this report, it has been considered necessary to carry out a further review of the retail impact, based on consideration of the updated assessment. As WYG Planning consultants undertook the Borough-wide assessment, they have been employed to re-review the impact of this development. This report (the WYG report) recognises that existing stores are trading below benchmark level (as set out in the RLNA), but states that this does not necessarily mean that such stores are not viable or vulnerable to the opening of new stores. The WYG report also sets out that the lower turnover of the proposed Aldi store, as set out by the applicant's consultant, is consistent with the Aldi Sales density set out in the RLNA.
- 8.20 The WYG report agrees that trade for the new Aldi store will be drawn substantially from other "discounter stores" such as Aldi in Sittingbourne and Whitstable (both 15% of the predicted turnover for the proposed store), but also from Tesco in Faversham town centre (15%), and Morrisons (edge of centre) 10%.
- 8.21 The WYG report then compares the effect of such trade diversion from existing stores, and the likely reduction in the annual turnover of these stores. It focuses on Faversham Town centre stores, but recognizes the role of Morrisons as an edge of centre store in facilitating linked trips to the centre. The report estimates the impact on Faversham town centre as a whole to be 5-6%, and on Morrisons to be 8%. It concludes that such impacts would not be "significantly adverse" and that it is unlikely any existing stores would close as a result of the Aldi proposal. This is on the basis that Aldi trades as a "discounter retailer" and as such competitive overlap with smaller stores (such as butchers, bakers, convenience stores, and Iceland) is low.
- 8.22 Subject to conditions to limit occupation to a "discounter store" and to control the extent of floorspace and comparison goods offer (see proposed conditions 31-35), the WYG report considers the scheme to be acceptable when tested against the NPPF (and I consider the same applies when tested against policy DM2) in relation to the retail impact tests, with no significant impacts arising, provided the above conditions are attached.
- 8.23 Overall, I am satisfied that there are no sequentially preferable sites for the retail development, and that the principle of a hotel development has been accepted through the grant of outline permission which includes a hotel of up to 100 rooms on the wider site – and which can still be implemented. Whilst the retail impact assessment concludes that there would be some loss of trade arising from the proposed supermarket on Faversham town centre, the advice received from the Council's consultant is that this would be unlikely to result in significant adverse impacts, and in turn I do not consider that it would undermine the vitality or viability of the Faversham town centre or other centres. On this basis, I consider the retail impact to be acceptable

under the terms of policy DM2 of the Local Plan and the NPPF.

- 8.24 Members should also note that the proposal would create employment opportunities, and the application forecasts that 75 equivalent full time jobs would be created. The hotel development would also be likely to increase local spending by overnight visitors. Policy CP1 of the Local Plan seeks for development proposals to contribute towards building a strong competitive economy, and to widen the Council's tourism offer, and this would contribute towards this.

Visual Impact

- 8.25 Policy CP4 of the Local Plan requires that development proposals should be of high quality design, appropriate to their surroundings, deliver safe attractive places, promote / reinforce local distinctiveness, make safe connections and provide green corridors. Policy MU7 states that development of Perry Court should demonstrate a strong landscape framework, hedge and tree planting, and provide footpath and cycle routes within green corridors. Built form should be high quality design and relate to existing built form and topography, rural approaches to the town and views from the south.
- 8.26 The proposal would form the primary building frontage into the "gateway" to the Perry Court wide development, and as such the need for a high quality design is paramount. Although the developer was encouraged to use the Design Panel for advice, they did not take up this option. However I am satisfied that my officers have been able to analyse the design impacts and negotiate design improvements to the scheme.
- 8.27 The principal elevations to both schemes face the primary road leading from the roundabout on Ashford Road into the site. The buildings would be set between 17 and 30 metres from the Ashford Road frontage, and this space would be used to provide landscaping and pedestrian footpaths that would connect through the wider Perry Court site and onto Ashford Road. I consider this "soft" edge to the Ashford Road frontage to be appropriate, and the footpath / cycle connections provide links through green corridors in accordance with the policy.
- 8.28 The hotel building would be taller and more prominent than the retail unit, being some 11 metres in height and sited (following advice from my officers) close to the primary road frontage into the site. This gives greater enclosure and strength to the street scene, and gives emphasis to the built form rather than car parking, which has been sited to the rear. The hotel follows a contemporary design, and the scale of the building has been broken into three sections through use of different materials and slight variations in height. The darker colour of the cladding and brickwork has been negotiated between officers and the applicant to provide a more recessive and organic tone to the building, on this edge-of-settlement location.
- 8.29 The retail unit takes a different approach, with car parking provided to the front and the unit set back in excess of 50 metres from the primary road. The building would be lower in height (at 8.5m) and less prominent than the hotel due to its set back into the site. Whilst my officers would have preferred the building to be close to the primary road to provide greater strength to the streetscene, this is not a format usually used by convenience traders, and was not an option that the applicant was willing to follow. As an alternative, officers are negotiating with the applicant to provide additional landscaping to the site boundaries, and within the car park, and to agree a form of

public art installation, to enhance the public realm. This is considered to be an acceptable compromise.

- 8.30 The retail building is proposed to be occupied by Aldi, and the design does follow a “corporate” approach in part. My officers have negotiated with the applicant to lift this design substantially from the original submission, through the use of different materials and provision of a corner detail at the main entrance to the building, which includes a Brise Soleil system with beige / brown coloured louvres. The intention is that the materials to be used for both the retail unit and hotel building are similar in appearance, to provide some visual coherency.
- 8.31 The landscape approach is to provide a tree-lined “Avenue” effect on both sides of the primary road, and to utilise similar hard and soft landscaping schemes (for the footpaths / cyclepaths and Ashford Road frontage). This has the potential to provide an attractive landscaped entrance to the site.
- 8.32 In my opinion, the larger scale of the buildings would be appropriate at the entrance to this wider development site, and the scale and height (particularly relating to the hotel) would not be disproportionate to other surrounding existing and proposed residential dwellings, which are/ would be sited some 50-60 metres from these proposed buildings. Soft landscaping, particularly on the boundary with Ashford Road, would also soften the visual impact of the buildings. The contemporary style of the hotel with a flat roof helps to limit the height of this building, and Members should note that at 11 metres in height, this would be no greater than the form of development on this plot as shown on the parameter plans submitted with the outline permission (albeit that the parameter plans refer to two storey development). The proposed retail unit would be lower in height than the outline parameter plans, and both buildings would be smaller in floor area than the parameter plans. Members should also note that the outline permission includes the provision of employment land allocated to the south of the retail unit of up to three storeys and 12.5 metres in height.
- 8.33 The application includes a Landscape and Visual Impact assessment which identifies the landscape character of the surrounding area and viewpoints of the development. The main “rural view” of the development is from the south, and such views are limited by landscaping, the effect of the M2 motorway, and the existing built confines of Faversham. When taking into account the outline permission and the scale of the development when compared to the outline parameters as described above, the scheme is not considered to result in any significant adverse effects or any greater effects than envisaged from the outline scheme.
- 8.34 Taking the above factors into account, I would conclude that the development is well designed, that the layout provides a substantial degree of landscaping and green corridors providing pedestrian and cycle connections, in accordance with the above policies.

The ability to integrate a larger retail development within the Wider Perry Court scheme

- 8.35 The outline permission included a parameters plan that demonstrated how the quantum of development approved under 15/504264 could be distributed through the site. This include use of a 0.5 Ha parcel of land as a mixed use retail / residential area, as well as parcels for employment land, a care home and hotel development.

- 8.36 The residential development as approved under reserved matters application 17/506603 accommodated the 310 residential units without the need to utilise the 0.5 Ha parcel of land. The developer is seeking (under a separate application) to move the care home onto this 0.5 Ha parcel, which in turn would enable the two parcels of land subject to this application to be considered for retail / hotel use.
- 8.37 In wider layout terms, I am satisfied that the integration of a larger retail unit as now proposed would not compromise the wider Perry Court development.

Residential Amenity

- 8.38 Policy DM14 of the Local Plan states that all developments should cause no significant harm to the amenities of surrounding uses or areas.
- 8.39 In this instance, the closest neighbouring uses are the existing dwellings on the east side of Ashford Road, and the new dwellings as approved within the wider Perry Court development site.
- 8.40 The hotel scheme proposes a building of three storeys in height and up to 11 metres in height. The building would be orientated to face side on to the dwellings on Ashford Road, and the depth of the building would be up to 22 metres at ground level, and 14 metres at first and second floor level. The supermarket would be up to 8.5 metres in height, with a flank elevation facing Ashford Road of some 30 metres in depth. Both buildings have been designed to include a landscaped buffer area to the Ashford Road frontage.
- 8.41 The buildings would be sited in the region of 55m-60m from the dwellings on the east side of Ashford Road. In addition, due to levels changes between the site and Ashford Road, the buildings would be raised above the level of these dwelling by around 1.5 metres. The section drawings submitted with the application indicate that the hotel building would be some 4.5 metres taller than a typical ridge line of nearby dwellings on Ashford Road, and the supermarket building would be some 2.6 metres taller.
- 8.42 The buildings would clearly be visible from these existing properties, across an existing private road, the A251 and through the landscaped buffer. At 3 storeys in height, the hotel development would also be taller than the indicative plans submitted with the outline application – which showed the hotel to be a 2 storey building. However notwithstanding this, given the considerable separation distance (in planning terms), the intervening A251 road and the ability for some softening through landscaping, I do not consider the buildings would cause unacceptable impacts on light, privacy or outlook to these properties.
- 8.43 The new residential development within Perry Court would be located generally to the west of the application site. This includes land subject to a current application for development of a care home. A gap of 21 metres would be maintained between the proposed care home building and the hotel. In amenity terms, I consider this relationship to be acceptable.
- 8.44 The closest permitted dwellings on the wider Perry Court site would be to the west of the retail unit, at a distance of 46 metres from the building. These properties would face the retail unit and car park. Given the relatively low height and form of the retail unit, I consider this distance to be acceptable to preserve sufficient light, privacy and outlook

to these approved dwellings. Further residential development to the north of the hotel would be separated by an area of public open space, and I consider this to be acceptable.

- 8.45 The proposals would also attract vehicle movements over long periods of the day. Given the function of Ashford Road as an A class road and a connection between Faversham and the M2, I consider that any noise / disturbance generated from customer vehicle movements and activity within car parks would be unlikely to cause unacceptable impacts on the amenities of those properties to the east of Ashford Road. The most trips would be generated by the retail unit, and the entrance to this would not pass through the approved residential development to the west. Whilst noise from the car park and activity around the retail unit in particular would most likely be evident to those new dwellings to the west, I do not consider this to be inherently unacceptable given the separation distances involved, and I consider that this would be taken into account by potential occupants of the new development when considering whether to reside in these units. In addition, I consider that at times earlier in the morning or late at night when the premises first opens or is soon to shut, the unit is less likely to be busy and as a result customers are more likely to park in the main car parking area to the front of the store rather than the car park by the side, which is closest to these residential units.
- 8.46 The application seeks to permit deliveries to the retail units between the hours of 06:00 to 23:00 hours, and a Delivery Management Plan has been submitted following initial concerns raised by the Environmental Health Officer. The plan includes measures such as no use of reversing beepers and requirements to turn off refrigeration equipment when vehicles are stationary. These measures are acceptable to the EHO to avoid unacceptable impacts on surrounding properties.
- 8.47 Taking the above into account, there would clearly be some impacts arising from the scheme, particularly the change in the outlook of existing properties on the east side of Ashford Road, and in respect of the hotel the building would be larger than indicatively shown under the outline permission. Nonetheless, as a full application there is no reason why the proposed development has to conform to the outline scheme. Whilst the developments are large and would be clearly visible from these properties, given the intervening distance and presence of the A251 road, I do not consider that this would result in unacceptable impacts that could justify a refusal in planning terms. On this basis, I do not consider the development would be in conflict with Policy DM14 of the Local Plan.

Highways

- 8.48 Policy DM6 of the Local Plan requires developments that generate significant traffic to include a Transport Assessment with any application. Where impacts from development on traffic generation would be in excess of the capacity of the highway network, improvements to the network as agreed by the Borough Council and Highway Authority will be expected. If cumulative impacts of development are severe, then the development will be refused.
- 8.49 Policy DM6 also requires developments to demonstrate that opportunities for sustainable transport modes have been taken up, and that applications demonstrate that proposals would not worsen air quality to an unacceptable degree. Developments

- should include provision for cyclists and pedestrians, and include facilities for low emission vehicles.
- 8.50 Policy MU7 of the Local Plan sets out that development of the site should include interim improvements to J7 of the M2, improvements to the A2 / A251 and the A2 / Brogdale Road, pedestrian and cycle routes, public transport improvements, and implementation of an agreed travel plan.
- 8.51 The hotel proposal does not raise any additional highways issues beyond those previously considered acceptable as part of the outline application for the wider site. That application was assessed to include a hotel development of up to 100 bedrooms. Although this is a separate application, it would effectively replace the hotel development proposed under the outline permission, and proposes an 84 bed hotel, which would have less traffic impacts than the modelling undertaken for the outline scheme.
- 8.52 The retail proposal does raise additional highways issues, as this is a larger development to the scheme permitted at outline stage. The application includes a Transport Assessment (as amended) which sets out the highways implications relating to the scheme. In this respect, KCC Highways advise that the modelling forecasts two way AM peak movements of an additional 77 vehicles and 150 PM peak movements on the new Perry Court Roundabout. The proposals would also result in an additional 32 AM and 66 PM movements on the Ashford Road / A2 junction, and an additional 15 AM and 29 PM movements on the A2 / Mall junction. KCC Highways advise that the A2 / A251 junction analysis demonstrates that this junction is exceeding capacity and that without mitigation the application could not be permitted.
- 8.53 This is not unsurprising as the need for improvements to this junction has already been identified. The wider outline permission for Perry Court has secured a sum of £300,000 for this purpose and other nearby development schemes are also contributing to this. KCC have been working on plans for either signalisation or a roundabout scheme for this junction, although these are currently being reviewed with the aim to provide a more comprehensive scheme with greater land-take, in order to provide greater capacity. In order to mitigate against the traffic impacts arising from this application, KCC Highways advise that an additional sum of £99,660 is required towards phase 2 of the junction improvement works. This will be secured via S106 Agreement. KCC Highways will be taking a report to the Joint Transportation Board on the 24th June which will set out the intended approach for the junction improvement.
- 8.54 Highways England have also identified that the retail element of the scheme will result in traffic impacts over and above those assessed under the outline scheme. Highways England seek a financial contribution towards improvements to Brenley Corner to mitigate this, and a sum of £27,105 has been agreed. On this basis, Highways England do not object to the proposal.
- 8.55 In terms of sustainability, the site is within walking distance from large areas of the town, although this does need to be tempered by the likelihood that many shoppers will use cars for ease or to carry shopping that could not be done by foot or bike. Nonetheless, the development would provide pedestrian access onto Ashford Road via the newly installed crossing point, and further footpath and cycle connections would be provided through the wider Perry Court development, leading to the A2 via the public footpath through Abbey School. In addition, I understand that part of the wider highways mitigation proposals being considered by KCC Highways are to install a crossing facility onto the A2, which would make the pedestrian connection to Faversham easier and more attractive.

- 8.56 The proposals both include car parks that would meet the parking requirements of KCC.
- 8.57 To summarise, the proposal would lead to greater traffic generation, and both KCC Highways and Highways England have identified that mitigation is required to deal with such impacts. The applicant has agreed to make the necessary financial contributions as requested to enable KCC Highways and Highways England to carry out the required mitigation. On this basis, I consider the proposal would not cause unacceptable highways impacts, and would accord with Policies DM6 and DM7 of the Local Plan.

Air Quality

- 8.58 Policy DM6 (2) (d) of the adopted Local Plan states that developments involving significant transport movements should integrate air quality management and environmental quality into developments and, in doing so, demonstrate that proposals do not worsen air quality to an unacceptable degree, especially taking into account the cumulative impact of development schemes within or likely to impact upon Air Quality Management Areas. Paragraph 181 of the NPPF states that planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and cumulative impacts from individual sites in local areas.
- 8.59 The site is not located within an Air Quality Management Area. However an AQMA is designated at Ospringe, approximately one kilometre to the west as the crow flies (or 1.4km by road) of the site.
- 8.60 The applicant has submitted an air quality assessment which models the wider Perry Court development flows with the proposed supermarket traffic, together with other committed developments. The modelling takes into account existing base conditions against a “maximum development flow” scenario.
- 8.61 The worst case nitrogen dioxide (NO₂) impacts arising from the development (modelled on maximum development flows present in 2020) are classed as moderate at the Public House on the northwest corner of the junction with Ospringe Road and at a few other receptors at similar positions relative to London Road. However, the report states that actual changes relative to the air quality assessment level (the AQAL) are small at 0.3 µg/m³ or less, which represents a change of only 1% relative to the AQAL. Other modelled changes are calculated to be either slight or mainly negligible.
- 8.62 The reports sets out that by the time maximum development flows would be present in practice (i.e. that the worst case 2020 scenario above will not in practice occur as all committed development will not be built by this time), future changes to background concentrations and emission factors indicate that all of the modelled receptors within the AQMA would experience a negligible impact due to development traffic.
- 8.63 In respect of PM₁₀ emissions (organic pollutants measuring 10 µg or less), the report sets out that , modelled concentrations show no changes arising from the development, that all modelled concentrations continue to lie well below the air quality objectives, and for all receptors the significance of development is defined as negligible.

- 8.64 The report states that the above effects are similar to those modelled for the original Perry Court development that was given outline planning permission. As such the additional/revised traffic generated by the local centre developments (the Aldi store and the hotel) will not significantly alter the local air quality, and the effects that were considered acceptable for approval of the Perry Court development will also be acceptable for the local centre developments.
- 8.65 The Council's Environmental Protection Team Manager accepts the results of the report that there will not be any significant adverse impacts on the AQMA or elsewhere as a result of this latest development. However as some 'moderate' impacts are forecast in 2020 from the development, it will be necessary to include mitigation measures. No objection is raised subject to securing a travel plan coordinator and electric charging points measures outlined in the AQ report.
- 8.66 On this basis the application is not considered to worsen air quality to an unacceptable degree, and mitigation is provided to help offset any air quality impact. This is considered to comply with Policy DM6 of the Local Plan and the NPPF.

Ecology

- 8.67 The ecological impacts of development on the wider Perry Court site have been previously considered and found to be acceptable under the outline permission. The KCC Ecologist advises that notable species (including reptiles, breeding birds and badgers) have been recorded within the wider site, and that as such that development will need to follow a precautionary mitigation strategy, which can be secured via a planning condition, and likewise ecological enhancements.
- 8.68 Natural England has not identified any conflict with the protection of the Swale and Thames Estuary SPA and Ramsar sites, and as this is not a residential development there is no requirement to contribute towards SAMMS.
- 8.69 I am satisfied that, subject to this, the scheme would not cause adverse impacts on biodiversity, and would comply with policy DM28.

9. CONCLUSION

- 9.01 This application would deliver development on a strategic site allocated for mixed use development in the Local Plan. The scheme would essentially add a supermarket to the quantum of development previously approved under outline permission 15/504264, and the retail impact associated with this has been found to be acceptable, subject to conditions to control the type of retail offer and floorspace. The proposed hotel would be in accordance with the parameters previously agreed for such use under the outline permission. The scheme would deliver economic benefits through additional jobs and improvements to the tourism offer
- 9.02 The scale and design of the scheme are acceptable, subject to agreement on the provision of further landscaping, and whilst the scheme would clearly change the outlook from dwellings on Ashford Road, this would not be to an unacceptable degree. Highways impacts are acceptable, subject to financial contributions towards identified mitigation, and air quality impacts are not considered to be unacceptable.

- 9.03 Overall, I am of the opinion that the scheme is acceptable and accords with the development plan and the NPPF.

10. RECOMMENDATION

Delegate to officers to GRANT permission subject to –

- Completion of a S106 Agreement to secure the additional highways contributions identified
- Submission of an amended plan to improve the extent of landscaping to the front of the retail site and car park.
- and the following conditions:-

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

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

General

- 2) The development shall be carried out in accordance with the following approved plans: 1416-PP Rev B, 1416-PCL Rev D, 1416-90 Rev E, 1416-300 Rev J, 1416-301 Rev K, 1416-350 Rev D, 1416-206 Rev C, 1416-205 Rev F, 1416-201 Rev D, 1416-200 Rev H, 1416-110 Rev EE

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

- 3) No development beyond the construction of foundations shall take place in any phase until details in the form of samples of external finishing materials to be used in the construction of the development hereby approved for that phase have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

- 4) No development beyond the construction of foundations for the hotel shall take place until the following building details (drawings to be at a suggested scale of 1:5) have been submitted to and approved in writing by the Local Planning Authority:
 - Section drawings of window frames and glazing bars, to include depth of window reveal from the external face of the building.
 - Manufacturer's colour brochure and specification details of the window product.
 - Section drawings of the junction between the cladding materials, brickwork and facing materials on the elevations of the building.
 - A section drawing of the wall capping detail
 - Facing materials for the lift overrun and plant enclosure on the roof of the hotel building.
 - Details of rainwater goods

The development shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity and design quality.

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

Reasons: In the interest of Security, Crime Prevention and Community Safety

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

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

Construction

- 7) No development in any phase 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 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 phase during construction;
 - (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, including the provision of wheel washing facilities;
 - (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) Measures to manage the routing and timings for construction and delivery vehicles

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.

- 8) No construction work in connection with each phase of 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

- 9) No impact pile driving in connection with the construction of each phase of the development shall take place on the site on any Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0800-1800hours, Saturday 0800 – 1300, unless in association with an emergency or with the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

Highways

- 10) The access details (including footpath connections) for each phase shown on the approved plans shall be completed prior to the occupation of that phase hereby approved, and the accesses shall thereafter be maintained.

Reason: In the interests of highway safety.

- 11) The area shown on the submitted plans as loading, off-loading and vehicle parking spaces shall be used for or be available for such use at all times when the premises are in use and no 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 that area of land or in such a position as to preclude vehicular access to this reserved area; such land and access thereto shall be provided prior to the commencement of the use hereby permitted.

Reason: Development without adequate provision for the parking, loading or off-loading of vehicles is likely to lead to parking inconvenient to other road users

- 12) Prior to the commencement of the external works for each phase, details of the secure covered cycle storage facilities for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and maintained thereafter.

Reason: in the interests of sustainable development

- 13) No occupation of each phase shall take place until a Staff Travel Plan, to reduce dependency on the private car, has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include objectives and modal-split targets, a programme of implementation and provision for monitoring, review and improvement (including the appointment of a travel plan coordinator). Thereafter, the Travel Plan shall be put into action and adhered to throughout the life of the development, or that of the Travel Plan itself, whichever is the shorter.

Reason: in the interests of sustainable development

- 14) Prior to the commencement of the external works for each phase, details of electric charging facilities to be provided in that phase shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed

prior to first public use of the buildings, and maintained thereafter.

Reason: In the interests of sustainable development.

- 15) No development in any phase shall be brought into use until the visibility splays as shown on the approved plans have been provided, and such splays shall thereafter be maintained with no obstructions over 0.9 metres above carriageway level within the splays.

Reason: In the interests of highway safety.

Landscaping

- 16) No development in any phase shall take place until full details of all existing trees and/or hedges in that phase, details of any trees or hedges proposed for removal, and measures to protect any trees or hedges shown to be retained within or immediately adjacent to the site, have been submitted to and approved in writing by the Local Planning Authority. Such details shall include
- (a) a plan showing the location of, and allocating a reference number to each existing tree and hedge on the site to be retained and indicating the crown spread of each tree, and extent of any hedge, and identifying those trees and hedges to be removed.
 - (b) details of the size, species, diameter, approximate height and an assessment of the general state of health and stability of each retained tree and hedge.
 - (c) details of any proposed arboricultural works required to any retained tree or hedge
 - (d) details of any alterations in ground levels and of the position of any excavation or other engineering works within the crown spread of any retained tree.
 - (e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree or hedge from damage before or during the course of development .

The development shall be carried out in accordance with the approved details and the approved protection measures shall be installed in full prior to the commencement of any development, and retained for the duration of construction works. No works, access, or storage within the protected areas shall take place, unless specifically approved in writing by the Local Planning Authority

In this condition "retained tree or hedge" means any existing tree or hedge which is to be retained in accordance with the drawing referred to in (a) above.

Reason: In the interests of protecting existing trees and hedges which are worthy of retention in the interests of the amenities of the area.

- 17) 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, measures to prevent vehicles from overhanging onto paths and landscaped areas within the car park, and an implementation programme.

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

- 18) 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 each phase of the development or in accordance with the programme, taking account of the planting seasons, as agreed in writing with the Local Planning Authority.

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

- 19) 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.

- 20) No development beyond the construction of foundations to the retail unit shall take place until details of the design and siting of a public art installation have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed prior to first opening of the retail unit to the public, or in accordance with a timetable approved in writing by the Local Planning Authority.

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

- 21) The open space for each phase, as identified on drawing 1416 OSA shall be provided and made available for public use at all times prior to first occupation of that phase of the development, and maintained as such thereafter.

Reason: To ensure that the development contributes to wider space objectives as set out under Policy MU7 of the Local Plan.

Contamination

- 22) Piling or any other foundation designs using penetrative methods shall not be permitted within the relevant phase 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 of that phase shall be carried out in accordance with the approved details.

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

- 23) 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.

Drainage

- 24) No infiltration of surface water drainage into the ground in any phase is permitted other than with the written consent of the Local Planning Authority for that phase. The development shall be carried out in accordance with any such 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 109 of the National Planning Policy Framework

- 25) No development shall commence in any phase until details of the proposed means of foul sewerage disposal for that phase have been submitted to, and approved in writing by, the Local Planning Authority.

Reason: To ensure adequate foul drainage facilities are provided

- 26) No development in any phase shall take place until a detailed sustainable surface water drainage scheme for that phase has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by each phase of the development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site, as detailed within the Flood Risk Assessment and Drainage Strategy prepared by BSP Consulting referenced 17-0303/FRA-DS, without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

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

- 27) No building hereby permitted in any phase shall be occupied until an operation and maintenance manual for the proposed sustainable drainage scheme for that phase is submitted to (and approved in writing) by the local planning authority. The manual at a minimum shall include the following details:

- A description of the drainage system and its key components
- A general arrangement plan with the location of drainage measures and critical features clearly marked
- An approximate timetable for the implementation of the drainage system
- Details of the future maintenance requirements of each drainage or SuDS component, and the frequency of such inspections and maintenance activities
- Details of who will undertake inspections and maintenance activities, including 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

The drainage scheme as approved shall subsequently be maintained in accordance with these details.

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

- 28) 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 for that phase, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; and topographical survey of 'as constructed' features.

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

Environmental

- 29) No dust or fume extraction or filtration equipment, or air conditioning, heating, ventilation or refrigeration equipment shall be installed on each phase of the development until full details of its design, siting, discharge points and predicted acoustic performance for that phase of development have been submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the amenities of nearby residential properties.

- 30) No deliveries shall take place outside the hours of 0600 - 2300 hours Monday to Saturday, and deliveries between the hours of 0600 - 0700 shall be conducted in line with the Delivery Management Plan dated November 2018. No deliveries shall take place on a Sunday, bank or public holiday outside of the hours of 08:00 – 20:00, and deliveries between the hours of 08:00 and 09:00 shall be conducted in line with the Delivery Management Plan dated November 2018.

Reason: In the interests of residential amenity.

Retail impact

- 31) The development hereby approved shall only be used as a Class A1 retail foodstore and shall be restricted to 'limited product line deep discount retailing' and shall be used for no other purpose falling within Class A1 of the Town and County Planning (Use Classes) Order 1987 (or any order revoking or re-enacting or amending that Order with or without modification). 'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 2,000 individual product lines.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Faversham Town Centre

- 32) The Total Class A1 (retail) floorspace hereby permitted shall not exceed 1,725 sqm gross internal area. The net sales area (defined as all internal areas to which customers have access, including checkouts and lobbies) shall not exceed 1,254 sqm without the consent of the Local Planning Authority.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Faversham Town Centre

- 33) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that Order with or without modification), the Class A1 (retail) floorspace hereby permitted shall be used primarily for the sale of convenience goods with a maximum of 251 sqm of the net sales area devoted to comparison goods

Reason: To control the extent of comparison goods retailing, Reason: to prevent unacceptable impacts upon the vitality and viability of Faversham Town Centre

- 34) The Class A1 (retail) unit hereby permitted shall be used as a single unit and shall not be sub-divided into two or more units, and no concessions shall be permitted within the unit.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Faversham Town Centre

- 35) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting or amending that Order with or without modification), no mezzanine floor or other form of internal floor to create additional floorspace other than that hereby permitted shall be constructed in the hereby permitted Class A1 (retail) unit.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Faversham Town Centre

- 36) The class A1 retail use hereby permitted shall not be open to customers or any other persons not employed within the business operating from the site outside the following times 0700 - 2200 on weekdays, Saturdays and Bank and Public Holidays and any 6 hours between 1000 - 1800 on Sundays.

Reason: In the interests of residential amenity.

Ecology

- 37) No installation of an external lighting scheme for each phase shall take place until a bat sensitive lighting scheme to minimise impacts on bats, for each phase, is submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of amenity and biodiversity

- 38) No development of any phase 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 for that phase. The development shall then be implemented in accordance with the agreed strategy.

Reason: In the interests of biodiversity

- 39) No development beyond the construction of foundations shall take place in any phase until a detailed scheme of ecological enhancements for that phase have been submitted to and approved in writing by the Local Planning Authority. The enhancement measures shall be completed prior to first use of the building.

Reason: In the interests of biodiversity.

Archaeology

40) No development of any phase shall take place until the applicant, or their agents or successors in title, has secured the implementation of the following, for each phase:

- (1) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the Local Planning Authority; and
- (2) following on from the evaluation, any safeguarding measures 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

INFORMATIVES

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

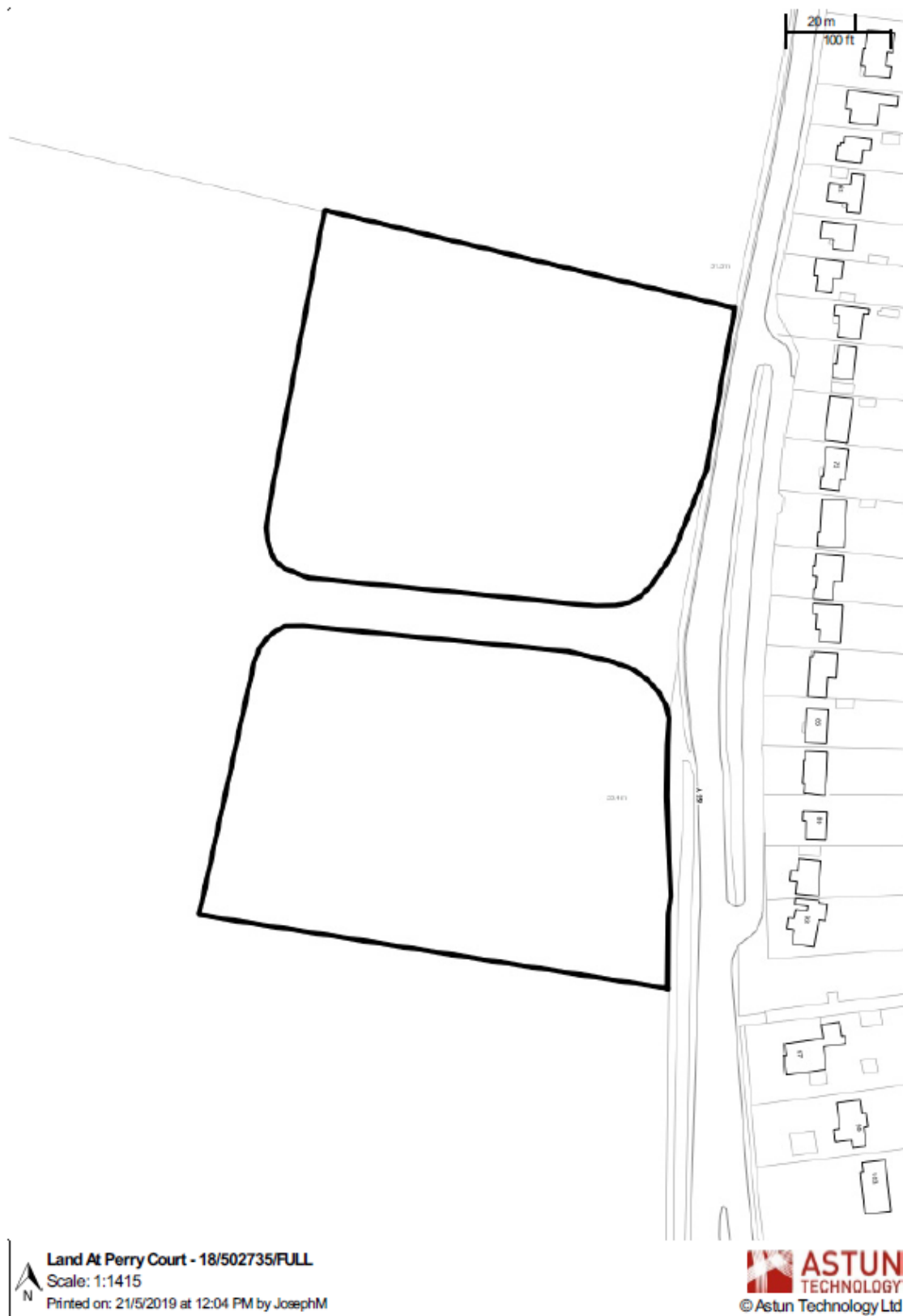
The Council's approach to the application

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 case, 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 – 30 MAY 2019

PART 5

Report of the Head of Planning

PART 5

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

- **Item 5.1 – 30 Ferry Road, Iwade**

APPEAL DISMISSED

COMMITTEE REFUSAL

Observations

Full support for the Council's adopted Supplementary Planning Guidance in respect of householder extensions.

- **Item 5.2 – Friston, Lower Road, Eastchurch**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Full support for the Council's adopted policies and Supplementary Planning Guidance, which strengthens the Council's position for future applications.

- **Item 5.3 – 10 Athelstan Road, Faversham**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

Whilst the Inspector accepts that consideration of outlook for a neighbour is a planning consideration, and in my view the two storey elongation of the original rear wing of this Victorian L shaped house makes an already poor situation worse, the Inspector has said the neighbour already has a restricted outlook and that the extension would not make matters worse for them.

- **Item 5.4 – Ashfield Court Farm, Newington**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

The Inspector has provided useful commentary that will assist officers in determining future similar applications.

- **Item 5.5 – 19 Victory Street, Sheerness**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

The Inspector is clear that the harm arising from the development is not so significant as to justify refusal of permission in this instance.

- **Item 5.6 – Coronation Drive, Leysdown**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector supported the Council's position that harm to the countryside outweighed housing supply issues due to the unsustainable location of the site. Full support for the Council's refusal.



Appeal Decision

Site visit made on 26 March 2019

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 17 April 2019

Appeal Ref: APP/V2255/D/19/3221434

30 Ferry Road, Iwade, Sittingbourne, Kent, ME9 8RR.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Roger Ware-Lane against the decision of Swale Borough Council.
 - The application Ref 18/505113/FULL, dated 28 September 2018, was refused by notice dated 13 December 2018.
 - The development proposed is for a second storey addition over garage to side elevation. Pitched roof to match existing.
-

Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. The appeal property, number 30 Ferry Road, is one half of a semi-detached pair of two-storey dwellings. It is one of a number of similar semi-detached houses set back from Ferry Road. The neighbouring property, number 28, has been extended up to the boundary of number 30 by way of a single storey side extension, linked and attached garage. However, as I saw despite these ground floor additions generally there is a significant gap between the pairs of dwellings, particularly at first floor level, giving this side of the street an open and spacious appearance. In contrast the newer development on the opposite side of the road comprises terraced housing.
4. Further, as identified by the appellant, a significant proportion of the new housing development in Iwade likewise comprises terraced, link-detached and three-storey apartment blocks. From my observations on site, therefore, although contrasting with the new development, the openness of the semi-detached houses here represents the local distinctiveness of this side of the road.
5. In addition to the conversion of the garage into a utility room, toilet and additional kitchen space, the appellant proposes the construction of a first floor extension over the existing garage to provide an additional bedroom and

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- ensuite at first floor level. The addition would extend the building at first floor level virtually hard up to the boundary with number 28.
6. The proposed first floor addition would be set back behind the front wall of the existing dwelling and has been designed with a hipped roof the ridge of which is set down below that of the host property. In itself the proposed addition would be a well mannered design subservient to the semi-detached pair.
 7. The Council's Supplementary Planning Guidance – *Designing an Extension – A Guide for Householders* (SPG) states that *where a two-storey side extension to a house is proposed in an area of mainly detached or semi-detached housing, the Council is anxious to see that the area should not become terraced in character, losing the sense of openness*. It goes on to advise that a gap of 2.0 metres between a first floor extension and the side boundary is normally required.
 8. I understand that the gap between the flank wall of number 30 as extended and the side boundary of number 28 at both ground and first floor level would in this case only be about 0.25 metres. Accordingly, even allowing for the staggered frontage, the hip roof form of the extension and the fact that the appeal property and its neighbours are set well back from the road, the proposal, as designed, would result in such a significant loss of openness in the street scene as to result in harm to the open and spacious character of the development here.
 9. My attention has been drawn to two recent appeal decisions APP/V2255/D/17/3187449 and APP/V2255/D/17/3187449 where it would appear from the limited information before me that not dissimilar side additions have been allowed. However, the circumstances surrounding these decisions appear to be different to this matter which, in any case, I have considered on its individual planning merits.
 10. I therefore conclude, in respect of the main issue, that the proposed two-storey side extension, by virtue of its projection to the side boundary at first floor level, would result in a harmful loss of openness between dwellings at first floor level, which would give rise to significant harm to the spacious character and appearance of the street scene. This would be contrary to Policies DM14 and DM16 of The Swale Borough Local Plan – Bearing Fruits 2031 (adopted July 2017) and to Para 5.0 of the Council's SPG as they relate to the need to reflect the positive characteristics of the site and locality and to reinforce or enhance as appropriate local distinctiveness.

Conclusions

11. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR

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Appeal Decision

Site visit made on 26 March 2019

by Philip Willmer BSc Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 17 April 2019

Appeal Ref: APP/V2255/D/19/3220418

Friston, Lower Road, Eastchurch, Sheerness, Kent, ME12 4HN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mark Coates against the decision of Swale Borough Council.
 - The application Ref 18/502617/FULL, dated 26 April 2018, was refused by notice dated 29 November 2018.
 - The development proposed is described as demolition of existing conservatory to replace with single storey ground floor extension and first floor alterations.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The address of the property is given as Eastchurch Road, Eastchurch. However, from both the Council's decision notice and from my visit to site I note that it is located in Lower Road, Eastchurch. I have therefore adopted the correct road name in the header above.

Main Issue

3. I consider the main issue in this case to be the effect of the proposed development on the host property and the character and appearance of the area.

Reasons

4. Friston is a modest detached chalet bungalow, previously extended to the rear and side with single storey additions. Immediately to the west is a larger detached chalet bungalow with a pair of semi-detached two-storey cottages to the east. It is located outside the built up area boundary in open countryside.
5. The appellant proposes the erection of a single storey side extension, first floor rear extension and a loft extension including raising the roof.
6. Policy DM11 of The Swale Borough Local Plan – Bearing Fruits 2031 (adopted July 2017) (LP) states that *the Council will permit extensions (taking into account any previous additions undertaken) to existing dwellings in rural areas where they are appropriate in scale, mass and appearance in relation to the location.*
7. The Council has also drawn my attention to its Supplementary Planning Guidance – *Designing an Extension—A Guide for Householders* (SPG). At

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paragraph 3.3 it advises that in the countryside scale is of particular importance and policies are therefore designed to maintain the attractive character of rural areas. Accordingly it states that the Council will not normally approve an increase in floorspace of more than 60%. The Council has calculated, and this is not challenged by the appellant, that taking into account previous additions, including the conversion of the roof void, the cumulative increase in floor area, if these further additions were permitted would be about 180%, being some three times more than normally found acceptable.

8. Due to its three dimensional form and overall massing the proposed first floor rear addition, when viewed from the rear and sides would be large, prominent and completely envelop the existing modest chalet.
9. As a result of the proposal the overall height of the extension would not be significantly increased and in this respect it would have limited impact on the street scene. However, although more modest and well articulated, the side extension, where the roof would be a continuation of the main roof, would significantly elongate the principal elevation which in turn would impact on the street scene.
10. I conclude in respect of the main issue that notwithstanding the overall increase in floor area, the proposed development as designed would, by reason of its three dimensional form and massing, be harmful not only to the host property but also the character and appearance of the wider countryside. It would therefore be contrary to LP Policies CP4, DM11, DM14 and DM16 and to the advice in the SPG as they seek to ensure that, amongst other things development is appropriately scaled and reinforces local distinctiveness.

Other Matters

11. The appellant has set out the particular circumstances of the family that justify the need for the proposed first floor accommodation. I acknowledge the health condition of one family member as outlined in the appellant's statement. Given the sensitive nature of the health information supplied to me as part of this appeal, it would not be appropriate for me to outline the specific health condition of the individual concerned. However, on the basis of the appellant's statement in this regard, I have no doubt that the proposal would be of benefit for the family member. This is a personal circumstance to which I afford weight in favour of the appeal. However, this must still be balanced against other material considerations.
12. I note the proposed use of reclaimed materials that I am sure would help the proposed side extension blend with the existing building. I also appreciate that the Council found the proposal would have little impact on the living conditions of neighbouring occupiers. Further, I believe, as suggested, the development could be undertaken with limited impact on residential amenity. I am also aware that the appellant has endeavoured to address the concerns of the Parish Council. However none of these considerations, either alone or collectively, outweigh my findings on the main issue.

Planning balance and conclusion

13. I acknowledge the health issues associated with one member of the family. This is a matter which weighs in favour of allowing the proposed development. In considering this matter, I have had due regard to the Public Sector Equality

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Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and due to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.

14. In respect of the above, these matters have to be weighed against my conclusion on the main issue which is that the proposal would have a significant adverse impact upon the host property and the character and appearance of the area. In this case, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring that significant harm is not caused to the character and appearance of the area. Indeed, the protection of the public interest cannot be achieved by means that are less interfering of the human rights of the family member.
15. Consequently, whilst I acknowledge the personal circumstances of the family member, I conclude that this is not a matter which outweighs the significant harm that would be caused by the proposal in respect of my aforementioned conclusion on the main issue. Therefore, and taking into account all other matters raised, the appeal should be dismissed.

Philip Willmer

INSPECTOR

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Appeal Decision

Site visit made on 17 April 2019

by Mr Kim Bennett DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2019

Appeal Ref: APP/V2255/D/19/3221136

10 Athelston Road, Faversham ME13 8QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr P Bennett and Ms P Turner against the decision of Swale Borough Council.
 - The application Ref 18/506066/FULL, dated 21 November 2018, was refused by notice dated 10 January 2019.
 - The development proposed is a two storey rear extension.
-

Decision

1. The appeal is allowed and planning permission is granted for a two storey rear extension at 10 Athelston Road, Faversham ME13 8QJ in accordance with the terms of the application, Ref 18/506066/FULL, dated 21 November 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 101/P2; 102/P1; 103/P1; 104/P2; 105/P3 and 106/P2.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Procedural Matter

2. The application was originally submitted to include a rear dormer and a ground floor rear extension as well as the two storey rear extension. However, following discussions with the Council the dormer window and ground floor extension were deleted from the proposed scheme. These were subsequently approved separately and individually under permitted development.¹

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupiers of No 8 Athelston Road.

¹ Application reference Nos 18/506497 & 18/506507

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Reasons

4. The appeal site comprises a two storey end of terrace house on the southern side of Athelston Road and close to its junction with Kingsnorth Road. At the rear, there is a two storey projection inset from the common boundary with No 8 Athelston Road and a single storey extension beyond that which has recently been demolished. There is a matching two storey projection at No 10 Athelston Road, although that has been extended further back and also at two storey level, and with a single storey extension beyond that. The rear dormer referred to above has since been completed and at the time of my visit, preparatory building works were underway to commence the ground floor extension, also approved under permitted development. No 8 Athelston Road lies to the east and on slightly lower ground because of the rise in the road level. It is also two storey but is semi-detached, and the two properties are separated by a narrow alleyway.
5. The Council is concerned that the proposed extension would detract from the outlook from No 8, particularly bearing in mind that the appeal site is on slightly higher ground. In reaching that view, the Council took into account that the proposed extension would breach the Building Research Establishment's (BRE) 45° rule. It would also conflict with advice in the Council's Supplementary Planning Guidance – 'Designing an Extension- A guide for Householders' (SPG), which says that first floor extensions close to the common boundary should not exceed 1.8 metres.
6. The appellant points out that the BRE tool is more an assessment for daylight and sunlight than for outlook and questions whether the latter is a proper planning consideration in any case. I agree with the former point although the 45° rule is not decisive in itself; it merely indicates that daylight and sunlight may be an issue which might prompt further studies. In this case the appellant has produced such studies to show that levels of daylight reaching the windows of No 8 would not be significantly impacted by the extension and there is no evidence before me to the contrary.
7. In terms of outlook being a planning consideration however, I disagree with the appellant and although more subjective, it nevertheless forms part of an overall assessment as to whether there would be an adverse impact upon living conditions that occupiers of adjacent properties could reasonably expect to enjoy. In that respect, regard needs to be had to the existing character of properties and the relationship between them. In this instance, outlook has always been somewhat restricted because of the plan form of the properties and the original rear projections at two storey level which reduces wider outlook.
8. Also of significance in this case, is the permitted development approval for the ground floor rear extension which extends up to the common boundary with No 8 and to a significant depth. That extension will impact upon the rear ground floor living room of No 8 to a far greater extent than the proposed two storey extension would, and represents a significant material consideration given that construction work has already commenced. The potential impact is therefore not just hypothetical. As a result, any impact upon No 8 from the current appeal proposal would be mainly at first floor level where there is a rear facing bedroom window. However, outlook from that window is already somewhat restricted and bearing in mind the first floor element of the proposed two

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storey extension would be 2 metres away from the common boundary with No 8 and would extend only 2 metres further in depth than the existing situation, I do not consider that outlook would be significantly changed, notwithstanding the slight increase in height of the appeal site.

9. With regard to conflict with the SPG, I do not see that being necessarily the case in this instance, since it specifically refers to a more flexible approach being taken if there is a gap to the boundary with the neighbour, which is the case here. In any event, such guidance cannot be prescriptive and much will depend upon individual relationships between adjoining sites.
10. Drawing the above together, I am satisfied that there would be no adverse impact upon the living conditions of the occupiers of No 8 Athelston Road, as a result of the proposal before me for consideration and bearing in mind current ongoing development.
11. The Council does not raise any issue with regard to any adverse impact upon No 12 Athelston Road nor with the design of the proposed extension and I agree with those assessments.
12. Having regard to the above, the proposal is compliant with Policies CP4, DM14 and DM16 of the Council's Local Plan: Bearing Fruits 2031 in that it would be appropriate in height, massing and scale and would cause no significant harm to amenity. Conditions for the development to be built in accordance with the approved plans and for matching materials, are necessary in the interests of certainty and visual amenity.
13. Accordingly, the appeal is allowed and planning permission granted.

Kim Bennett

INSPECTOR



Appeal Decision

Site visit made on 2 April 2019

by **Kenneth Stone** BSC Hons DipTP MRTPI

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

Decision date: 24 April 2019

Appeal Ref: APP/V2255/D/19/3223271

Ashfield Court Farm, School Lane, Newington ME9 7LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Maureen Green against the decision of Swale Borough Council.
 - The application Ref 18/505431/FULL, dated 16 October 2018, was refused by notice dated 14 December 2018.
 - The development proposed is the conversion and extension of the existing triple garage at Ashfield Farm into an annex for a dependent elderly relative.
-

Decision

1. The appeal is allowed and planning permission is granted for the conversion and extension of the existing triple garage at Ashfield Farm into an annex for a dependent elderly relative at Ashfield Court Farm, School Lane, Newington ME9 7LB in accordance with the terms of the application, Ref 18/505431/FULL, dated 16 October 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan, 18.33.01; proposed block plan, 18.33.03; Proposed plans and elevations, 18.33.05.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing garage.

Preliminary matters

2. The Council are concerned that the scale, form and facilities provided in the extended garage building are likely to give rise to the creation of a separate residential dwelling, capable of independent occupation from the main dwelling. The first question I turn to is whether the proposal would constitute a separate dwelling or would it be capable of such.
3. The description of development proposes the conversion and extension of the existing triple garage into an annexe for a dependent elderly relative. The plans indicate that the accommodation to be provided would be two bedrooms, a separate WC, a bathroom with a WC, a living dining area and a separate utility room. No kitchen facilities are shown on the submitted plans. Beyond the building the 'annexe' would not be provided with a separate garden area

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- and would be accessed along the same access lane. There is no subdivision of the plot proposed on the plans and there would be no segregation of the front parking/ hardstanding/ turning area or the rear private garden.
4. Taking these matters together the existing planning unit incorporates the bungalow and adjacent detached garage the front parking/ hardstanding/ turning area and the rear amenity space. The proposals would not result in the subdivision of that planning unit and it is the intention of the applicant that the 'annexe' accommodation to be created would be occupied by an elderly relative who would share living activities with the occupants of the main dwelling. Indeed on the basis of the submitted plans there are no cooking facilities for the new 'annexe' facility. Together with the access, parking and garden area this would to my mind demonstrate a functional relationship between the main house and the 'annexe'.
 5. I accept that the proposed 'annexe' could be altered to introduce cooking facilities, or a small kitchen which may reduce that functional relationship but as was established in *Uttlesford DC v SSE & White [1992]* even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling. The use of the building as ancillary accommodation to the main dwelling would therefore not result in a material change of use.
 6. The case may arise in the future that there were subsequent alterations to the building or plot or occupation such that would mean that development had occurred, and this would then be a matter for the local planning authority dependant on the facts of the case at that time. As the appeal is presented there is sufficient evidence to demonstrate a functional link and a degree of inter dependence on the future occupiers of the development such that it is appropriate to consider the proposal as an annexe.
 7. That being said the question then arises as to whether the occupation should be secured to ensure its future occupation as an annexe by way of a suitably worded condition. The Council considered and set aside such a condition as they considered the functional link could not be adequately secured by the imposition of such a condition. The appellant on the other hand has contended that the lack of kitchen facilities associated with the other functional links clearly establish the functional nature of the relationship of the future occupiers and therefore the condition is unnecessary. Also pointing out that the Council on previous decisions have relied on the functional associations to determine whether a proposal is an annexe or not.
 8. I have concluded that the proposal before me is an annexe and does not result in a material change of use. That being the case and on the basis of the information before me I am satisfied that a condition would not therefore be necessary in this case as the establishment of a separate dwelling would create a new planning unit, result in a material change of use and would therefore require planning permission of its own right, should it occur in the future, and this would give the Council control.
 9. As the proposal would not be an independent unit of accommodation policy ST3 regarding settlement hierarchy and Policy CP2 on transport in the *Bearing Fruits 2031 – The Swale Borough Local Plan, adopted July 2017 (LP)* are not material, in the manner argued by the Council, to the determination of this appeal.

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Main Issue

10. Having dealt with the issue of the use of the 'annexe' the main issue in this case is then the effect of the proposed development on the character and appearance of the area.

Reasons

11. The proposal would extend and alter an existing triple garage. The garage sits adjacent to the main bungalow and has a hipped and pitched roof. The proposed extension would be to the rear and replace existing floorspace that would be demolished. There would be little alteration to the overall floor space of the extended building however it would have its bulk and mass increased due to the additional roofing. The additional roof would be to the rear of the building, would not result in an increase in the height of the building and would not be readily visible from the closest main highway, School Lane.
12. School Lane is some 60 or so metres to the front of the properties and there are glimpsed views through to the existing bungalow and garage but the rear or side elevations would not be readily visible. The buildings sit close to another agricultural work shop building and together the proposed extension would not significantly add to the scale of built development either the garage building or the buildings immediately surrounding. If glimpsed views of the extension were available these would be seen in the context of the existing garage, bungalow and adjacent building and would not be seen as out of keeping in terms of scale.
13. For the reasons given above I conclude that the proposals would not result in material harm to the character and appearance of the surrounding area. Consequently, it would not conflict with policies CP3 and DM14 of the LP which together seek to delivery good quality development and homes.

Overall conclusions and conditions

14. I am satisfied that the proposal would not result in material harm to the character and appearance of the area and that it would be an annexe for a dependent elderly relative and not the creation of a new dwelling and I have determined the appeal on that basis. The proposal therefore is in accordance with the development plan and there are no material considerations that indicate a decision otherwise would be appropriate.
15. In terms of conditions I have addressed the necessity, or not as the case may be, for a condition restricting occupation to ancillary accommodation, however a condition on the approved plans will ensure the development is implemented as applied for. Otherwise a materials condition is required in the interests of the character and appearance of the development.
16. For the reasons given above I conclude that the appeal should be allowed.

Kenneth Stone

INSPECTOR

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Appeal Decision

Site visit made on 26 March 2019

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2019

Appeal Ref: APP/V2255/18/3214285

19 Victory Street, Sheerness, Kent ME12 1NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Manga Dhillon of Fans UK Limited against the decision of Swale Borough Council.
 - The application Ref 18/502592/FULL, dated 9 May 2018, was refused by notice dated 9 August 2018.
 - The development proposed is 'retrospective planning for' 1 bedroom flat with external staircase.
-

Decision

1. The appeal is allowed and planning permission is granted for a 1 bedroom flat with external staircase at 19 Victory Street, Sheerness, Kent ME12 1NZ in accordance with the terms of the application, Ref 18/502592, dated 9 May 2018, and the plans submitted with it, subject to the following condition:
 - 1) The use and other operations hereby permitted shall cease and the external staircase be removed and all equipment and materials brought onto the land for the purposes of such use and materials resulting from the demolition shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the painting of the external staircase in black to match the railings shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

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time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matter

2. The appeal relates to the first floor of the building which is in use as a one bedroom flat. It is accessed via a terrace to the rear and an external metal staircase. The submitted details indicate that permission is sought for the use of the first floor as a one bedroom flat and the external staircase. I have amended the description of the development to remove unnecessary wording and this forms the basis of my decision.

Main Issue

3. The main issue is the effect of the external metal staircase on the character and appearance of the site and the Sheerness Mile Town Conservation Area (CA).

Reasons

4. The CA is centred on the town centre of Sheerness, which is mostly C19 in origin, having begun its development in anticipation of the seaside resort potential of the area, with subsequent growth driven by the expansion of the role of the nearby Naval Dockyard during the Crimea War. Transport links were improved in the late C19 with the Sittingbourne to Sheerness railway line, with its terminus close to the appeal site. During the 1930s the town became a low cost holiday resort, popular with Londoners, declining in the second half of the C20.
5. Buildings in the town centre are generally modest but reflect the town's developing functions, giving it a practical and bustling character. The appeal site falls within an area of rectilinear small streets adjacent to the High Street, which were originally fronted by timber-framed cottages and later C19 brick built terraced houses. However, much of the area has been redeveloped, including with large open car parks, although parts of the street layout continue to provide evidence of the pattern of development. Victory Street provides evidence of the grid layout, and contains two small terraces and the former public house at the appeal site, on the edge of the CA. 19 Victory Street makes a positive contribution to the CA, as a retained older building in an area which has been subject to redevelopment.
6. The appeal proposal has resulted in an external metal staircase on the flank elevation of the building, which is open to views from the main A250 Millennium Way and to the front from Victory Street. The flank elevation is partially screened by vegetation but the staircase is visible in local views. I saw on my site visit that there is a degree of visual clutter in the immediate area, including highway railings, street lights, signage and fences. In the wider area, I saw a variety of metal railings on boundaries, as well as an external metal staircase which is visible across the open car park on the other side of Victory Street. Rear elevations of buildings fronting the High Street are also visible, creating a varied and busy appearance.
7. In this context, the external metal staircase is not a feature that appears intrinsically out of character. Notwithstanding this, the galvanised metal elements appear stark and functional, and combined with the black metal

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railings gives the staircase a discordant appearance. I note however that the appellant is willing to paint the staircase, which would result in a more harmonious and coherent appearance, and would thereby preserve the character and appearance of the CA. I therefore find that, subject to a condition requiring the galvanised metal elements to be painted black to match the railings, the proposed development would not be harmful to the character and appearance of the site and the CA. In reaching this conclusion, I have had regard to the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

8. As a result, I do not find any conflict with policies DM14 and DM33 of the Swale Borough Local Plan 2017, insofar as they seek to ensure that new development conserves and enhances the built environment and preserves or enhances all features that contribute positively to the special character and appearance of a conservation area. I also find no conflict with the guidance in the National Planning Policy Framework.

Other Matters

9. I note that the Council has raised concerns in the Planning Officer's report regarding the effect of the extraction system and air conditioning units associated with the use of the ground floor of 19 Victory Street on the living conditions of future occupiers with regard to noise and odour. However, this did not form a reason for refusal and the Environmental Health Officer notes that there is no evidence that nuisance is being caused and that conditions could not be imposed on the existing use of the ground floor premises. I have no reason to disagree with this conclusion.

Conditions and Conclusion

10. The purpose of condition 1 is to require the appellant to comply with a strict timetable for dealing with the painting of the metal staircase, which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
11. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be allowed.

N Thomas

INSPECTOR

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Appeal Decision

Site visit made on 26 March 2019

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th May 2019

Appeal Ref: APP/V2255/W/18/3211059

Coronation Drive, Leysdown ME12 4AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Brian Nash against the decision of Swale Borough Council.
 - The application Ref 18/500751, dated 7 February 2018, was refused by notice dated 9 May 2018.
 - The development proposed is construction of 2 x 3 bedroom dwellings and associated vehicle parking.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was refused for three reasons. The third reason relates to land contamination and the main parties are in agreement that this was included on the decision notice in error and is not being pursued by the Council. I have therefore dealt with the appeal on the basis of the first two reasons for refusal.
3. Since the Council determined the application, the Government has published the results of the 2018 Housing Delivery Test (HDT) measurement and the main parties have been given the opportunity to comment on the implications for this case.

Main Issues

4. The main issues are:
 - Whether the site is a suitable location for the proposed development having regard to the Council's settlement strategy, its implications for the countryside, and its accessibility to local services and facilities.
 - Whether the site represents an appropriate location for housing having regard to flood risk.

Reasons

Suitable location

5. The site is adjacent to the small settlement of Bay View, a predominantly residential area close to the larger settlement of Leysdown-on-Sea. The site is open land which is part of a builder's yard, and with open farmland/paddocks to the rear and east side, adjacent to some stables and a riding arena, beyond

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which are some holiday homes. Coronation Drive is lined with detached bungalows and chalet bungalows. The submitted evidence indicates that the appeal site is close to but outside of the defined built-up area boundary for Bay View, which includes dwellings on the opposite side of Coronation Drive to the appeal site, and the dwellings beyond the holiday homes. The site is therefore separated from the defined built up area by the road and by other uses. It has a different character to the adjacent residential area, is relatively free from built form and is seen within the context of the wider open countryside. I therefore conclude that the site is within the open countryside.

6. Policy ST1 of the Swale Borough Local Plan 2017 (the Local Plan) seeks to deliver sustainable development that accords with the settlement strategy for the Borough. Policy ST3 sets out the settlement strategy and directs development to existing defined settlements and allocated sites. The appeal site is close to but outside of the built up area boundary, where Policy ST3 seeks to restrict development unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. Although it is close to the built-up area boundary, the site is not within a defined settlement and therefore the proposal is contrary to the settlement strategy for the area.
7. Policy ST3 makes it clear that the open countryside is outside the built-up area boundaries, and it does not include an exception for development on previously developed land. The proposed development has not been put forward as one of the exceptions that would be supported by paragraph 79 of the National Planning Policy Framework (the Framework). The site is currently open and contrasts with the built-up residential character of Coronation Drive. The proposed dwellings, hard-standings and associated gardens would introduce a significant degree of urbanisation into the site. I accept that the proposal includes wider improvements to the ecological value and visual appearance of the site, but the extension of the built-up area onto the appeal site would result in an incursion of built form into the open countryside. The urbanisation of the appearance of the site would be readily apparent from the surrounding area, and its intrinsic value as part of the open countryside would thereby be undermined.
8. Policy CP2 seeks to ensure that development minimises the need to travel for employment and services. Bay View offers very limited facilities, while there are some day to day facilities in Leysdown-on-Sea, and Eastchurch Primary School is within walking distance. The main B2231 has a footway and is lit, although there is no street lighting within Coronation Drive. I understand that there is an hourly bus service between Leysdown and Rushenden. It would therefore be possible to walk or use public transport to access some local facilities and services. However, in view of the limited bus service and the likely need to access a wider range of facilities and services in Eastchurch and further afield, it is unlikely that future occupiers would have a realistic alternative to the private motor car. As a result, the site would have relatively poor accessibility to local services and facilities.
9. For the reasons set out above, I conclude that the site is not a suitable location for new housing, in terms of the settlement strategy, the implications for the countryside, and its accessibility to services and facilities. The proposal would therefore be in conflict with Policy ST3 of the Local Plan which sets out the

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settlement strategy and seeks to restrict development in the open countryside, and Policies ST1, ST6, CP2 and DM14, which seek, amongst other matters to deliver sustainable development that accords with the settlement strategy; focus development at allocated sites or within built up area boundaries; promote sustainable transport through the location of development; and permit development that accords with the adopted development plan. Policy DM9 relates to rural exception housing and is not relevant to this proposal as it has not been put forward as affordable housing to meet local needs. It would also be contrary the Framework.

Flood risk

10. According to the evidence, the entire appeal site lies within Flood Zone 3, which is defined by the 'Planning Practice Guidance: Flood Risk and Coastal Change' (PPG) as having a high probability of flooding. The submitted Flood Risk Assessment (FRA)¹ identifies that the site benefits from existing flood defences. Policy DM21 of the Local Plan advises that development proposals should accord with national planning policy and planning practice guidance, avoid inappropriate development in areas at risk of flooding.
11. Paragraph 155 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It further outlines the need for development to pass a Sequential Test, the aim of which is to steer new development to areas with the lowest risk of flooding. If there are reasonably available sites at a lower risk of flooding then the development should not be permitted.
12. The Council is of the view that there are other areas within the Borough that are at less risk of flooding and I have no reason to disagree. Furthermore, I have seen no evidence to suggest that there is no land within Flood Zone 1 that would be available for development in the locality. I recognise that the appellant wishes to carry out the development on this land to provide dwellings to be occupied by his own family in a convenient location adjacent to their equestrian facilities. However, no convincing evidence has been provided to demonstrate why this is necessary, nor that the future occupation of the dwellings would be restricted in this manner. Accordingly, these factors attract limited weight, and do not demonstrate that the catchment for reasonably available sites should be so restricted. I acknowledge that the proposed dwellings would be sited on the higher part of the site, and that the site benefits from flood defences. However, the Sequential Test requires consideration of the potential for other sites to meet the need for the development. It therefore follows that on the evidence before me, it has not been demonstrated that the Sequential Test has been passed. Consequently, more vulnerable residential development should be directed away from the appeal site to reduce the risk of harm from flooding in accordance with the advice set out in the Framework.
13. Given that I do not consider that the Sequential Test has been passed, it is not necessary to go on to consider the Exception Test. I note that the FRA indicates that the development would not increase the risk of flooding at the site or elsewhere, through the incorporation of a mitigation measures and sustainable urban drainage features, and that subject to mitigation measures regarding the

¹ Flood Risk Assessment for the Proposed Development at Land at Coronation Drive, Leysdown-on-Sea, Kent January 2018 by Herrington Consulting Limited.

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finished floor levels that the risk of flooding would be low. On this basis, the Environment Agency had no objection to the proposal. I also recognise that the proposal would bring modest benefits to the local economy and community through supporting facilities and services, and would be built to high environmental standards. However, these factors do not address the Framework's general objective of avoiding such development in higher risk locations in the first instance.

14. As the development would fail the Sequential Test, I therefore find that the site does not represent an appropriate location for housing having regard to flood risk. It would therefore be contrary to Policy DM21 of the Local Plan, insofar as it seeks to ensure that inappropriate development in areas at risk of flooding is avoided, and the flooding implications of development should be considered in line with national planning policy and planning practice guidance. It would also be contrary to the Framework.

Other Matters

15. I have had regard to the site's location in relation to a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended. Although not identified as a formal reason for refusal, the Council has stated that mitigation is required in the form of a financial contribution. A Unilateral Undertaking has been provided to make provision for the required mitigation. However, as any consideration of that matter would not affect my findings on the main issues, and the appeal would in any case be dismissed, it is not necessary for me to address that objection any further as part of this decision.

Planning Balance and Conclusion

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the National Planning Policy Framework, indicate otherwise. I recognise that there are policies in the development plan that are supportive of the provision of additional housing. However, I have identified that the proposed development would be in conflict with policies ST1, ST3, ST6, CP2, DM14 and DM21 of the Local Plan. It would therefore be contrary to the relevant development plan policies.
17. The National Planning Policy Framework (the Framework) is a material consideration in planning decisions and at paragraph 11 it states that where policies which are most important for determining the application are out of date, permission should be granted unless specific policies within the Framework provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. The Borough has a recently adopted Local Plan and I have seen no evidence to suggest that it should be considered out of date. In any event, the first step is to consider whether there are specific policies in the Framework that indicate that development should be restricted. Footnote 6 of the Framework gives examples of such policies, and includes "areas at risk of flooding". For the reasons already set out, the proposal would conflict with the Framework policy in relation to planning and flood risk advice, and specifically fails to pass the requisite Sequential Test in relation to an area at risk of

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flooding. This provides a clear reason for refusing the appeal proposal. As such, the 'tilted balance' in paragraph 11d)ii would not apply in these circumstances.

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

N Thomas

INSPECTOR

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